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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)प्राधिकार से प्रकाशित
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No. 381]नई दिल्ली, शुक्रवार, अप्रैल 16, 2004/चैत्र 27, 1926
NEW DELHI, FRIDAY, APRIL 16, 2004/CHAITRA 27, 1926गृह मंत्रालय
अधिसूचना

नई दिल्ली, 16 अप्रैल, 2004

का.आ. 499(अ).—केन्द्रीय सरकार ने, विधि-विरुद्ध क्रिया कलाप निवारण अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 26 सितंबर, 2003 को स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमि) को भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का.आ.1113(अ) तारीख 26 सितंबर, 2003 द्वारा विधि विरुद्ध संगम घोषित किया था ;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की अधिसूचना सं.1229 (अ) तारीख 23 अक्टूबर, 2003 द्वारा विधि विरुद्ध क्रिया कलाप (निवारण) अधिकरण का गठन किया था जिसमें दिल्ली उच्च न्यायालय के न्यायमूर्ति श्री आर.सी.चोपड़ा थे ;

और केन्द्रीय सरकार ने उक्त अधिसूचना की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना को तारीख 24 अक्टूबर, 2003 को इस बात का न्याय निर्णयन करने के प्रयोजन के लिए उक्त अधिकरण को निर्दिष्ट किया था कि क्या उक्त संगम को विधि-विरुद्ध घोषित करने के लिए पर्याप्त कारण था या नहीं ;

और उक्त अधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना सं. का.आ.1113 (अ) तारीख 26 सितंबर, 2003 में की गई घोषणा की पुष्टि करते हुए 23 मार्च, 2004 को एक आदेश किया था ;

अतः, अब केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात् :-

(आदेश इस अधिसूचना के अंग्रेजी पाठ में छपा है ।)

[फा. सं. 14017/1/2004-एन आई-III]

ए. के. जैन, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS**NOTIFICATION**

New Delhi, the 16th April, 2004

S.O. 499(E).— WHEREAS the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) declared on the 26th September, 2003 the Students Islamic Movement of India (SIMI) as an unlawful association, vide notification of the Government of India in the Ministry of Home Affairs number S.O. 1113 (E) dated the 26th September, 2003;

AND WHEREAS, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, constituted on the 23rd October, 2003 the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice R.C. Chopra, Judge of the Delhi High Court vide notification of the Government of India in the Ministry of Home Affairs number S.O. 1229 (E) dated the 23rd October, 2003;

AND WHEREAS the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, referred the said notification to the said Tribunal on the 24th October, 2003 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as an unlawful association;

AND WHEREAS the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act made an Order on the 23rd March, 2004 confirming the declaration made in the notification number S.O. 1113 (E) dated the 26th September, 2003;

NOW, THEREFORE, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely: -

Before The Tribunal constituted under Section 5 of the Unlawful
Activities (Prevention) Act, 1967.

In the matter of :

Gazette Notification No.SO-1113-E dated 26.9.2003 declaring Students Islamic Movement of India an Unlawful Association under Section 3(1) of Unlawful Activities (Prevention) Act, 1967.

CORAM:

HON'BLE MR.JUSTICE R.C.CHOPRA

Present :

Mr.K.K.Sud, Additional Solicitor General with Mr.Mahipal,
Mr.R.V.Sinha and Mr.Neeraj Jain, Advocates for Union of India.

Mr. Siddharth Luthra with Mr.Mateesh Goyal, Mr.S.N.Vashishth
and Mr.H.A.Siddiqui, Advocates for SIMI

ORDER

The Students Islamic Movement of India (hereinafter referred to as "SIMI" only) was established in the year 1977 at Aligarh, U.P. On 27.9.2001, by a Gazette Notification No.SO-960-E, the Central Government banned SIMI in exercise of powers under Section 3 (3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "Act" only). A Tribunal was constituted under Section 5 (1) of the

Act which confirmed the declaration made by the Central Government under Section 3(1) of the Act.

On 26.9.2003, vide notification No.S.O.-1113-B, the Central Government issued a fresh notification under Section 3 Sub-Clause (1) of the Act and again declared SIMI to be an unlawful Association. Vide notification No.S.O.-1229-E dated 23.10.2003, this Tribunal was constituted under Section 5 (1) of the Act for adjudicating as to whether or not there is sufficient cause for declaring SIMI an unlawful Association.

Vide orders dated 29.10.2003, a notice under Section 4(2) of the Act was issued to SIMI to show cause, within 30 days from the date of the service of the notice, as to why the Association should not be declared unlawful. The notice was ordered to be served upon SIMI at its principal office or by affixing a copy of the notice at some conspicuous part of the office of the Association, if any. In addition, the notice was also ordered to be served by publication in two national newspapers, one in English and one in Hindi and in one newspaper of the concerned State in which the activities of the Association were ordinarily carried on. It was further ordered that the notice be served upon the Association by way of broadcast on All India Radio and telecast on Doordarshan. The object of issuing notice under Section 4(2) of the Act by so many modes was to ensure that the Association was duly served with the notice and it

was in a position to appear before the Tribunal in the course of proceedings.

On 10.12.2003, Shri Siddharth Luthra, Shri Manish Goyal and Shri M.A.Siddiqui, Advocates, put in appearance on behalf of the Association. The Central Government placed on record an affidavit of Shri C.B. Sharma, Inspector, Special Cell, to show that the notice under Section 4(2) of the Act had been affixed/pasted at the main entrance gate of the Head Office of the Association at Zakir Nagar, New Delhi and in addition, a copy of the notice had been served upon Mohd. Ashraf Zafri as well as Shahid Badar Falai, members/activists of SIML, who refused to accept the same. The notice was published in "Hindustan Times" (English), "Navbharat Times" (Hindi) and a vernacular newspaper "Kaumi Awaz". It was telecast on Doordarshan and broadcast on All India Radio also.

Copies of the background note and other documents were supplied to learned counsel for the Association. The background note contained the grounds for issuance of notification under Section 3 (1) of the Act. Copies of those documents were not supplied, which the Central Government considered proper to withhold in terms of proviso to Section 3 (2) of the Act. The time for filing a reply to the show cause notice was extended within which a reply was filed.

The Association entered appearance through its erstwhile President Shri Shahid Badar, who was the last President of SIMI as no fresh elections of the SIMI had been held. Learned counsel for the SIMI pointed out that in terms of Article 26(c) of the Constitution of SIMI, the term of its President is for one year only but he continues to hold Office till the next President is elected. In these premises, the Association SIMI is being represented through Shri Shahid Badar, the last President of SIMI.

In the written statement/reply filed on behalf of the Association, it has been pleaded that material documents have been deliberately withheld by the Central Government and the background note does not specify the entire material that was placed before the Cabinet Committee for forming opinion under Section 3(1) of the Act. It is submitted that there is complete absence of material to show that the circumstances existed making it necessary for the Central Government to declare the Association unlawful with immediate effect. It is stated that Central Government has acted arbitrarily, with mala fide intentions and for political gains by banning the Association without giving it an opportunity to represent its case. It is pointed out that Notification has been issued mechanically by reiterating the same grounds on which first Notification of 2001 was issued. It is emphasized that the notification has been issued without application of mind, without scrutiny of the

material/documents and it suffers from suppressio veri and suggestio falsi.

It is submitted that the Association was formed on 25.4.1977 as a social, cultural and religious organization for the welfare of all persons in India and it believes in unity of God and human kind. It is stated that the activities of the Association have always been open and lawful and it has undertaken several programmes for providing help to the needy students, career guidance to students and other social events. It is denied that the Association has ever challenged the territorial integrity of India or has done anything to incite communal violence in the country. It is also pleaded that in view of the ban on 27.9.2001, it ceased to exist and as such, had no activities, which could attract the declaration of ban on 26.9.2003. It is stated that under the Act, there is no power with the Central Government to renew a ban and as such, the declaration made by the Central Government is in excess of authority. By referring to the notifications dated 27.9.2001 and 26.9.2003, it is argued that the two notifications are almost identical in language and allegations and as such, have been issued mechanically, without application of mind and without there being sufficient cause to issue the same or enforce it with immediate effect. It is also pleaded that in the past two years, there has been no incident by the Association or its erstwhile members, which may constitute unlawful activity under the provisions of the Act and the

Association is a victim of disinformation campaign by a section of media. Terming the notification mala fide and colourable exercise of powers, it is prayed that the declaration may not be confirmed.

It is also contended that the extension of ban by the notification in question is contrary to the decisions of the Supreme Court in Mohd. Jafar Vs. U.O.I. in 1994 Supplementary (2) SCC P-1 and Jamaat-E-Islami Hind Vs. U.O.I reported in (1995) 1 SCC P-428. It has been emphatically denied that SIMI has been indulging in any activity, which is prejudicial to communal harmony or hurts the religious sentiments of other communities or incites or propagates against territorial integrity of India. It is denied that the "Jehad" has anything to do with the Government established by-law. It is stated that "Jehad" is nothing but a war against evil and it means making of all possible efforts to remove evil from this earth. It is also denied that Association is receiving any financial assistance from any other country or it has any connection with any terrorist organization or outfit. It is asserted that since 27.9.2001, when the first ban came into operation, all the Offices of SIMI are sealed and this Association is not functional at all. It is denied that the Association or its members have ever advocated a right of self-determination in Kashmir or have ever taken any pro-Pakistan stand regarding Kashmir. It is submitted that it has never eugolized or glorified Islamic terrorists and fundamentalists like Osama Bin Laden, Sheikh

Mohd.Yasin or Gulbudin Hikmatyar or has ever used any derogatory language for Hindu Gods and Goddesses. It is denied that SIMI members or activists have been ever arrested with arms and ammunitions or have been involved in any terror related activity. The cases registered against its members are stated to be false. It is denied that the Association is working for an International Islamic order or is in close touch with Muslim militant outfits. It is disputed that SIMI or its activists were involved in bomb blasts in Mumbai.

After hearing learned counsel for the parties, this Tribunal vide orders dated 16.12.2003, decided to hold its sittings in different States so that the evidence produce by the Central Government, State Governments, public witnesses and SIMI may be recorded for forming its opinion under Section 4(3) of the Act. The evidence of the witnesses was to be filed on affidavits and cross-examination of the witnesses was to be permitted, if found necessary.

On 27.12.2003, the Tribunal commenced recording of evidence. Seven witnesses were produced by the Central Government at Hyderabad. PW-1 Shri S.Girdhar, Public Relations Officer, Office of Commissioner of Police, Hyderabad, proved the public notice issued by the State Government in terms of the directions issued by this Tribunal regarding its sittings. The original cuttings of the newspapers in English, Telugu and Urdu were proved as Exhibit P-1 (colly). The affidavit of

this witness is Ex.P-2. PW-2 Mohd. Jameeluddin, Inspector of Police, P.S. Kalapathar, Hyderabad produced his affidavit Ex.P-3 and stated that this affidavit may be read as his examination-in-chief. In his affidavit, he gave details of a criminal case No.51/2001 under Section 153-B IPC read with Section 10/13(1)/3 of the Unlawful Activities (Prevention) Act, 1967 registered on 30.9.2001. Two accused, who were arrested, were found sitting in a room and criticising the Government for banning SIMI. They were supporting Kashmiri militants and condemning the Government for supporting the Americans against Taliban. In the course of their interrogations, these accused gave details of the activities of SIMI and their support to the demand for cession of Kashmir to Pakistan. The office bearers of SIMI were supporting Mujahidins all over the world and creating hatred against Hinduism. From their possession, Constitution of SIMI, unused membership forms of SIMI, subscription forms, receipts of SIMI and various books, posters were recovered, which disclosed the unlawful aims and objects of SIMI. Two audio cassettes were also recovered in which Ilias Khan, regional Secretary of SIMI was making anti-Hindus and anti-India remarks. He was also eulogising Mujahidins, who had died while attacking security forces. He also referred to another case registered under Section 10 read with Section 3 of Unlawful Activities (Prevention) Act, 1967 on 30.9.2001 in which four persons were arrested. They were condemning

the Government for banning the SIMI and were supporting Kashmiri militants' demand for separate Jammu & Kashmir. They were praising Osama Bin Laden. In the course of their interrogations, they admitted that they were active members of SIMI. A poster was recovered from them in which SIMI had declared that there was great danger to Islam and Muslims around the world should resist. He also referred to a case registered on 2.10.2001 in which five accused were arrested and it was found that one of them was condemning the Government and supporting Jammu & Kashmir militants as well as Osama Bin Laden. Some literature also was recovered from them which reflected their will to globalize Islam. This witness also referred to a criminal case No.55/2001 registered on the intervening night of 2nd & 3rd October, 2001 in which one person named Mohammad Abdul Quddus was arrested. In the course of his interrogations, he confessed that he was propagating ideology of SIMI, which advocated "Jehad" as well as "Shahadat" and called Hindus as "Kafirs". SIMI also advocated secession of Kashmir to Pakistan and they supported Osama Bin Laden. He gave the names of some office bearers of SIMI, who were proposing training to Muslim youth at Militant Camps. Some literature was recovered from him also. He proved on record documents Ex. P-4 (colly), which were true and correct copies of the original official documents and included English translations of those documents, which were in vernacular. He also

added that he was dealing with SIMI activists in the State of Andhra Pradesh and had found that the office bearers and members of SIMI were misguiding and misleading Muslim youth by telling them that "Jehad" was their path and "Shahadat" was their desire. They have been telling these youths that Kashmir is not a part of India and Muslim terrorists in the State of Jammu & Kashmir are not militants but freedom fighters called "Jehadis". He also stated that SIMI activists and office bearers do not believe in secularism and democracy and they propagate global Islamization. They call upon their workers to make efforts to convert Hindus into Muslims and call Hindus "Kafirs". They also tell their workers that if a "Kafir" is killed, they will attain heaven. They do not believe in Hindu "Devi Devatas" and condemn Hinduism. It leads to communal disharmony and tension. According to him, they do all this with a view to destroy secularism in India. In his cross-examination by counsel for SIMI, he denied that the accused in case FIR No.115/2003 at P.S. Kalapathar had no links with SIMI. He also denied that this case was falsely registered with a view to provide material to the Government for banning SIMI. It is noteworthy that except putting two suggestions, which were denied, no other question was put to this witness.

PW-3 Shri B.Prakash, Inspector of Police, P.S. Narsapur, Hyderabad also proved on record his affidavit Ex.P-5 in which he had stated that his predecessor had registered criminal case No.81/2001 under

Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 on 2.10.2001. He had conducted raid in which he found five accused in a meeting propagating the ideology of SIMI among Muslim youth for raising funds for the activities of SIMI and achieving their goal of establishing Islamic rule in India. He had seized SIMI literature and one volunteer entry card in the name of Mohammad Aziz. He added that the accused against whom cases have been registered at Narsapur are SIMI activists. He also corroborated PW-2 to say that the SIMI members and activists do not believe in the Constitution of India and say that Kashmir is not a part of India and the Muslim activists in the State of Jammu & Kashmir are not militants but freedom fighters called "Jehadis". He also added that in spite of ban, the SIMI activists are carrying out their activities surreptitiously and in case this Organization had not been banned, its members would have destroyed the country by spreading communal disharmony and tension. In his cross-examination, he admitted that in Narsapur, only one FIR had been registered on 3.10.2001 and no FIR had been registered thereafter under the said Act. He stated that they were keeping strict surveillance to prevent such crimes. He mentioned names of so many persons in Narsapur, who were working for this Organization and were accused in the aforesaid FIR. Some of the SIMI activists had gone underground also. According to him, the accused in the FIR, had confessed that they were the members of SIMI.

PW-4 Shri M.Venkata Swamy, Circle Inspector, P.S.Haliya, A.P. proved his affidavit and documents on record and stated that the FIR under the Act had been registered on 29.9.2001. No FIR had been registered thereafter. PW-5 Shri D.Surya Prakash, Inspector of Police, P.S. Chandraghat, Andhra Pradesh, proved his affidavit and documents and stated that the activities of SIMI were continuing and had this Association not been banned, it would have created havoc in the country. He stated in his affidavit that SIMI activists believe in Islamic fundamentalism and they are working for an international Islamic order. He also stated that they promote communal hatred through their speeches and posters. He admitted that after the FIR No.284/2001 registered under Section 10 of the Act, no fresh case had been registered. PW-6 Shri Ravindra Naik, D.S.P., General Offences Wing of CID, Hyderabad proved his affidavit and documents and stated that the accused whose names were mentioned in Ex.P-12, were members of SIMI as well as an Organization known as "Indian Muslim Mohammad Mujahidin", which was having links with ISI of Pakistan. He stated that SIMI had organized a conference at Aurangabad between 5th and 7th September, 1999, which was attended by the aforesaid accused and thereafter only, they had started indulging in serious offences including Section 153-A of IPC. They were indulging in offences of murder, planting of bombs, lootings etc. in predominantly Hindu inhabited areas as well as areas of

public importance with a view to create communal disturbances. According to him, the case registered vide FIR No.39/2000 was still pending. In his affidavit, he gave details of various cases registered against SIMI activists, which were pending trial. In his cross-examination, he admitted that the said case was relating to offences committed prior to 26.9.2001 and after that date, no case had been registered. PW-7 Shri T.Raghupati Gaud, Inspector of Police, P.S. Mir Chowk, Hyderabad, also proved on record his affidavit and the documents. In his cross-examination, a suggestion was given to him that except persons mentioned at S.No.1 to 3, others were not members of SIMI and even persons mentioned at S.No.1 to 3 were only past members of SIMI. After the close of evidence at Hyderabad by the Central Government, learned counsel for SIMI also stated that he did not wish to produce any witness at Hyderabad. No public witness came forward to make any statement.

In the State of Maharashtra, PW-8 Shri Gansyamsingh T.Padwal, Inspector of Police, P.S.Kurla, Mumbai, proved his affidavit Ex.P-16 and stated that it may be read as his examination-in-chief. In his affidavit, he gave details of the activities of SIMI and stated that they propagate "Jehad" and spread hatred between Hindus and Muslims to damage secular fabric of society. He also stated that activities of SIMI are under control because of the ban and the regular surveillance kept

over them. He also proved on record documents Ex.P-17 (colly), which were true copies of the official documents. He also placed on record the translations of those documents, which were in vernacular. He deposed about a photograph on page 29 of Ex.P-17, which was attached with the challan of FIR No.1841/2001, registered at P.S.Kurla in which the SIMI activists were shown to be holding a meeting. He also proved his affidavit P-18 and documents P-19 and stated that in the course of investigation of the cases against SIMI, he had found that their main object is not to abide by the Constitution of India and the laws of India and globalize Islamization. They also try to create communal tension and proclaim that Kashmir is not a part of India. He stated that had there been no surveillance, they would have created more problems in the State. In his cross-examination, he stated that even after declaration of SIMI as an unlawful Association and arrest of some of its office bearers/members, the SIMI activities have been going on. He added that when the SIMI activists, who were arrested on 27th & 28th September, 2001, came out of the Court, they raised anti-India slogans and eugolized Osama Bin Laden.

PW-9 Shri Shrikant K.Ramdas, Sub-Inspector of Police, Detection Crime Branch, CID, Unit-VI, Mumbai, proved his affidavit Ex.P-23 and the documents P-24 (colly) and stated that he was one of the Investigating Officers in the three bomb blast cases which took place in

Mumbai on 6.12.2002, 28.1.2003 and 13.3.2003. He stated that most of the accused involved in these case were active members of SIMI. In para 3 of the affidavit, he gave the names of those SIMI activists, who were prime accused in the three bomb blast cases. The first bomb blast took place in McDonald restaurant near Mumbai Central Railway Station on 6.12.2002 in which 25 persons sustained injuries and property worth lacs of rupees was destroyed. The second bomb blast took place on 28.1.2003 at Mongibai Sabzi Market, Ville Parle, Mumbai in which one lady died and 32 persons sustained injuries. The third bomb blast took place on 13th March, 2003 in a sub-urban local train at Murund Railway Station, Mumbai in which 11 persons died and 82 suffered injuries. There was substantial damage to public property also. He stated that in the course of investigations, it was found that all these three bomb blasts were in pursuance of one criminal conspiracy and out of 16 accused, six were found to be having connections with SIMI. One accused C.A.M.Basheer, who was declared a Proclaimed Offender, was from Kerala and was having links with SIMI. C.A.M.Basheer was All India President of SIMI and accused Saquib Abdul Hamid Nachan was All India General Secretary of SIMI. He also gave names of other accused, who were found to be members of SIMI. He added that a telephonic conversation between C.A.M.Basheer and Saquib Abdul Hamid Nachan disclosed that accused Nachan had given shelter to a Pakistani terrorist

named Faizal Khan of Lashkar-E-Toeba. Said Faizal Khan was later killed in a Police operation at Goregaon, Mumbai. The accused, who were SIMI activists, had a meeting with Faizal Khan at Pune before these bomb blasts in which they decided to give training to Muslim youth for carrying out "Jehad". Thereafter, they had actually given training to some Muslim youth regarding use of weapons at Mohali Hills as well as Karvi Hills in District Thane, Mumbai. This witness stated that large quantities of arms and ammunition, live hand grenades, hand bomb shells and hazardous chemicals required for manufacturing bombs were recovered. Three of the accused whose names were given by him, gave confessions also which were recorded by a designated Officer under Section 32 of the Prevention of Terrorism Act, in which they admitted that they were SIMI activists and were involved in aforesaid bomb blasts. According to this witness, the aforesaid SIMI activists were having inter-State connections with other SIMI activists and were having links with Lashkar-E-Toeba also, which is a Pakistan based terrorist Organization. Accused Noor Abdul Malik Ansari had undergone three months' training given by Lashkar-E-Toeba at Pakistan. He also stated that in the meeting held at Pune with Faizal Khan, the aforesaid accused had hatched a conspiracy to eliminate some Hindu leaders. It was also found that accused Saquib Abdul Hamid Nachan had already been convicted in a TADA case and was awarded 10 years' sentence but after his release, he

came back to Maharashtra and got involved in unlawful activities. This witness stated that a diary was recovered from deceased terrorist Faizal Khan in which it was stated that the aforesaid accused had been paid by him and it contained accounts also of money disbursed by the terrorist Faizal Khan. This witness stated that their investigations had revealed that SIMI activists were creating havoc and tension in India and they wanted Muslim youth to carry out "Jehad". They also propagate that those Muslims, who killed non-Muslims, go to heaven. They also declare that Kashmir is not a part of India. He also added that had there been no ban on SIMI, its members would have indulged in more criminal activities and created havoc in the country. In his cross-examination, he stated that only after the arrest of the accused in the third bomb blast, their investigations revealed that the aforesaid 16 accused were involved in the earlier two bomb blasts also and there was a common conspiracy for all the three bomb blasts. It was at this stage, that they found that the above mentioned six accused were SIMI activists. He admitted that they do not have complete list/details of SIMI members/activists. He denied that the aforesaid six accused had been falsely implicated in the bomb blast cases. He denied that he was making a false statement against SIMI and its members/activists.

PW-10 Shri Raghunath T.Chalke, S.I., P.S. Park Side,
Mumbai, PW-11 Shri Rashid B.Sheikh, S.I., P.S. Dharavi, Mumbai and

PW-12 Shri Waman Mahaduji Turukmane, Under Secretary to Government of Maharashtra, Home Department, Mantralaya, Mumbai also proved their affidavits on record and the documents attached with the affidavits.

PW-13 Shri Pardeep B.Sawant, Dy. Commissioner of Police, CID, Mumbai proved his affidavit Ex.P-31 and stated that he was well aware of the activities of SIMI. In his affidavit, he stated that he was controlling and supervising various Officers dealing with communal affairs in Mumbai and as such, was well acquainted with the cases relating to SIMI. He gave details of those FIRs, which were registered against SIMI office bearers or activists after the imposition of first ban 27.9.2001 to show that even after ban, the SIMI activists were trying to spread communal unrest and wage Islamic struggle from Ayodhya to Jerusalem. Some of the accused were found in possession of provocative pamphlets/books belonging to SIMI Organization and eulogising Osama Bin Laden. He referred to the three bomb blast cases and the involvement of SIMI members therein. He stated that in the course of investigations, it was found that the accused, who were SIMI members, were in touch with Pakistani based military Organizations such as Lashkar-E-Toeba. They were getting funds from illegal sources and propagating hatred between Hindus and Muslims. He also stated that their aim was to globalize Islam. In the course of the investigations of

bomb blast cases, they had found that the activities of SIMI were still going on. He added that after September, 2001, there have been cases against SIMI member/activists, which were mentioned in para 2 of his affidavit.

PW-14 Shri Arun Prabhakar Borude, Inspector of Police, Crime Branch, Mumbai, proved his affidavit and documents. He also stated that he was the Investigating Officer of CR.No.156/2002 registered with DCB, CID, Mumbai in connection with bomb blast in a Bus on 2.12.2002 near Ghatkopar Railway Station, Mumbai. In this bomb blast, two persons had died and 49 were seriously injured. Public property was also destroyed. In the course of investigations, 19 persons were arrested against whom a challan was filed in a POTA Court. Investigations disclosed that 11 out of 19 accused were SIMI members or having connections with SIMI and they were involved in the earlier three bomb blast cases, which had taken place in Mumbai. These accused were having links with Lashkar-E-Toeba, a Pakistani terrorist outfit as well as Muslim Defence Force, which was having its roots in Madras. He added that Muslim Defence Force was being funded by Abu Hamza, who was staying at Saudi Arabia and was wanted in Ghatkopar bomb blast case. He was, at present, Chairman of Lashkar-E-Toeba in Saudi Arabia. He stated that in the course of his confession, one accused Imran Rehman Khan had admitted that he was a member of Lashkar-E-Toeba. This

confession was recorded by a designated Officer under Section 32 of Prevention of Terrorism Act. This witness went on to say that from the custody of an accused Sheikh Mohammad Muzzammi Jameel Ahmed, 30 CDs were recovered, which contained an appeal by Maulana Azhar, a terrorist, who was involved in the hijacking of IC-814 from Nepal to Kandahar and later released by the Government of India. These CDs contained the clippings of Godhara riots in Gujarat and interviews of victims, demolition of Babri Masjid and a Mosque in Palestine and 52 photographs of different Hindu Shrines. It contained an Al-Qaeda manual of a terrorist outfit run by Osama Bin Laden. He stated that SIMI was being funded by Abu Hamza, a terrorist, based in Saudi Arabia. According to him, prior to Ghatkopar bomb blast, 11 accused connected with SIMI were under their surveillance but still they managed to commit the aforesaid bomb blast. Out of these, 10 accused are absconding and steps are being taken to declare them Proclaimed Offenders. In his cross-examination by learned counsel for the SIMI, he stated that he could not tell the number of Officers, who were keeping surveillance over SIMI activists as this information could not be disclosed in public interest. The CDs seized by him did not contain the names of SIMI but it could be linked with SIMI because these were being viewed and used by SIMI members. Al-Qaeda literature also did not contain any stamp of SIMI.

PW-15 Shri Kishore Bhivsenrao Baviskar, Inspector of Police, Andheri Police Station, Mumbai, PW-16 Shri Ramesh Narayan Chaudhary, Asstt. Police Inspector, P.S. Andheri, Mumbai, PW-17 Shri Suhas P.Kamble, Sub-Inspector of Police, P.S. Bhandup, Mumbai and PW-18 Shri Vijay Shankarrao Dalvi, Inspector of Police, PCB, CID, Mumbai placed on record their affidavits along with documents. They also corroborated other Police Officers regarding activities of SIMI activists. They denied the suggestions given by learned counsel for SIMI that they were deposing falsely only with a view to support the ban on SIMI imposed by Central Government. After the evidence was closed at Mumbai by the Central Government, learned counsel for SIMI stated that he did not wish to produce any defence witness at Mumbai. No public witness came forward to make a statement in spite of public notices issued.

In the sitting held at Trivendram, Kerala, PWs-19 & 20 were produced by the Central Government. PW-19 Shri Rajesh Dewan, IPS, DIG of Police, CBCID, Ernakulam, proved on record his affidavits Ex.P-42 and P-44 and stated that these may be read as his examination-in-chief. He also placed on record the documents Ex.P-43 (colly) and a list of the cases registered against SIMI activists after the imposition of ban. The list is Ex.P-45. His affidavit Ex.P-42 is in regard to the issuance of public notice and the affidavit Ex.P-44 in regard to the cases registered

against SIMI activists in the State of Kerala after the ban imposed on 27.9.2001. The list Ex.P-45 gives the names and addresses of the accused and the status thereof. In his cross-examination, he admitted that some of the cases mentioned in Ex.P-45 have ended in acquittal and some are still at the stage of trial. He stated that in some of those case, SIMI had been specifically referred to. PW-20 I.P.Velappan Nair, Superintendent of Police (Intelligence), CID, Ernakulam, Kerala proved his affidavit Ex.P-46. He also proved on record the photocopy of a leaflet published by "Muslim Ikya Samithi", an Organization which was a group formed by some of the SIMI activists. Ex.P-47 is a photocopy, P-48, a true translation thereof and P-49, a photocopy of the report published in "Hindu" on 3.9.2003. In this leaflet, the "Muslim Hindi Forum" (Muslim Ikya Samithi) had called upon the Muslims to stand against Shiv Sena, Vishwa Hindu Parishad terrorists. By referring to Godhara incident, Gujarat riots, Babri Masjid, Bombay riots and some other incidents, a message was sought to be conveyed to the Muslims that with the support of the Government and Prime Minister, criminals were coming to behead the Muslims and they do not understand the language of peace and compassion and only strong retaliation could make them understand. In the newspaper "The Hindu" dated 3.9.2003, a report was published, a copy of which is Ex.P-49. It also stated that SIMI activists were re-grouping in the State of Kerala and a former President

of SIMI was a prime suspect in the bomb blasts in Mumbai. In the cross-examination of this witness, it came out that his affidavit was based on information received from the Police sources as well as Intelligence Agencies and the SIMI activists had started working under different banners. No witness was produced by SIMI at Trivendrum also. No public witness came forward.

At the sitting of the Tribunal at Bhopal, Madhya Pradesh, PW-21 Shri Dashrath Kumar, Under Secretary, Home Department, Government of Madhya Pradesh, Bhopal, PW-22 Shri Laxmi Narayan Kataria, D.S.P., Khandwa, M.P., PW-23 Shri Jitender Dwivedi, S.D.O.P., Shahjahpur, M.P., PW-24 Shri Gajendra Singh Jadon, D.S.P., P.S. Guna, M.P., PW-25 Shri T.S.Nagraj, S.D.P.O., Sheopur, M.P., PW-26 Shri N.P.Barkhade, Additional S.P., Neemach, PW-27 Shri Rajiv Mishra, City Superintendent of Police, Brahampur, M.P., PW-28 Shri I.B.Singh, D.S.P., Jabalpur, M.P., PW-29 Shri Santosh Pathak, S.D.P.O., Seoni, M.P., PW-30 Shri Avinash Singh, Deputy Superintendent of Police, Distt. Special Branch, Bhopal, PW-31 Shri Ravi Shankar Shukla, D.S.P., Indore, M.P., PW-32 Shri Manoj Kumar Srivastava, D.S.P., Ujjain, M.P. and PW-33 Shri Aditya Dubey, Asstt. Inspector General of Police, Bhopal were examined by the Central Government. They proved their affidavits as well as documents.

PW-22 Shri Laxmi Narayan Kataria, D.S.P., Khandwa, M.P.

placed on record his affidavit Ex.P-52 and the documents Ex.P-53 (colly). In his affidavit Ex.P-52, he stated that in spite of strict surveillance, the SIMI activists were still indulging in their activities secretly. According to him, SIMI activists have no faith in the Constitution of India and they intend to establish Islamic rule in the country as well as world. They also try to disturb communal harmony and creat communal tension and keep close contacts with terrorists. They believe in "Jehad" and call non-Muslims "Kafirs". They also support terrorism in Jammu & Kashmir by saying that the same is a freedom movement. He gave details of four cases registered against SIMI activists under Unlawful Activities (Prevention) Act, 1967. In his cross-examination, he stated that his affidavit is based on personal knowledge as well as documents, which had been brought to his notice. He had obtained information from intelligence sources that SIMI was having close connections with terrorist groups and the FIRs referred to in his affidavit were against those SIMI members who were having connections with terrorists.

PW-23 Shri Jitender Dwivedi proved his affidavit Ex.P-54 and the documents Ex.P-55 (colly). In his affidavit, he gave details of some cases registered against SIMI activists and stated that in spite of strict surveillance, SIMI activists were still continuing with anti-national

activities. In his cross-examination, he stated that through the records of the cases referred in his affidavit, he came to know that the accused involved therein were SIMI activists. He had not seen any document to show that the accused mentioned in the FIRs were members of SIMI. They had not been able to trace out the printers or the publishers of the pamphlets referred to in the documents filed by him. PW-24 Shri Gajendra Singh Jadon, D.S.P. proved his affidavit Ex.P-56 and documents Ex.P-57 (colly). He gave details of some cases registered against SIMI activists in District Guna, M.P. These cases were under Section 108 of Cr.PC. One of these cases was against accused Abdul Farid Khan. The allegations against him were that on 11.12.2001, he was found spreading communal hatred and was having connections with SIMI. Copies of the statements of the witnesses are found in Ex.P-57 (colly) at pages 295 to page 301. In his cross-examination, he stated that the confessions made by the accused in regard to their connections with SIMI had come to his notice through the documents as well as briefings given by the Investigating Officers.

PW-28 Shri I.B.Singh, Dy.Superintendent of Police, proved his affidavits as Ex.P-64 in which he had given details of the aims and objects of SIMI as well as the details of the cases registered against SIMI activists on 30.9.2001 and 1.10.2001. He also gave details of the literature and material seized from the accused, which included SIMI

literature as well as a photocopy in which Babri Masjid structure was shown to be shedding tears. There was a Chechnya poster also as well as an audio cassette in which SIMI activists were delivering inflammatory speeches. From Page 645 to page 825 is Exhibit P-65 (colly) containing copies of the magazines and other literature issued by SIMI in which anti-India and anti-Russia comments are contained with criticism of idol worship. He deposed in regard to certain pamphlets and admitted in his cross-examination that they had not succeeded in tracing out the printers/publishers of the said pamphlets. He denied that he was making a false statement. PW-29 Shri Santosh Pathak, S.D.O.P. proved his affidavit Ex.P-66 and the documents Ex.P-67 (colly). In his affidavit Ex.P-66, he stated that SIMI members/activists believe in "Jehad" and treat non-Muslims as "Kafirs". They do not believe in the Constitution of India and oppose idol worship. He also stated that in spite of strict surveillance and ban, SIMI activists were continuing with their activities secretly. In his cross-examination, he stated that on the basis of intelligence reports, documents recovered from the accused and confessions made by them, it was clear that the accused were having connections with SIMI. He stated that the activities of SIMI were quite secret and clandestine and as such, no list of its members was available.

PW-30 Shri Avinash Singh, D.S.P., proved his affidavit Ex.P-68 and the documents Ex.P-69 (colly). In his affidavit Ex.P-68, he

not only corroborated other witnesses regarding the aims and objects of SIMI, but also gave details of the cases registered against SIMI activists. In his cross-examination, he stated that since he is working as Deputy Superintendent of Police in Special Branch, Bhopal, he has personal knowledge about SIMI activists and he knows the names of most of them. He stated that he is in a position to identify also most of them as he is continuously monitoring them. He admitted that at present, SIMI has no office in Bhopal but before the imposition of ban, they had an office in Bhopal. PW-31 Shri Ravi Shankar Shukla, D.S.P., proved his affidavit P-70 and the documents Ex.P-71 (colly). In his affidavit, he also stated that SIMI activists are still active in spite of ban. He also deposed about their aims and objects and stated that they have no faith in the Constitution of India. They are also propagating "Jehad". He gave details of various cases registered against SIMI activists in District Indore. Some of these cases were registered on 6.10.2001, 18.10.2001 which shows that even after imposition of ban, the SIMI activists were continuing with unlawful activities. He placed on record copies of certain pamphlets also in Ex.P-71 (colly) issued by SIMI, which condemned demolition of Babri Masjid and proclaimed that Muslims were being subjected to various atrocities. The pamphlets on page 1071 of Ex.P-71 (colly) eugolized "Talibans". In his cross-examination, he stated that they could not recover any list of SIMI activists/members. He

denied that his affidavit is false. PW-32 Shri Manoj Kumar Srivastava, D.S.P., proved his affidavit Ex.P-72 and the documents Ex.P-73 (colly). In his cross-examination, he stated that on the basis of the records, he has stated that the accused mentioned in his affidavit were connected with SIML.

PW-33 Shri Aditya Dubey, Asstt. Inspector General of Police, proved his affidavit Ex.P-74 and a list of cases Ex.P-75 registered in the State of Madhya Pradesh against SIMI activists/members after the imposition of ban on 27.9.2001. In his affidavit, he deposed that SIMI activists do not believe in the Constitution of India and want to rule the country according to Islam. They do not consider Kashmir to be a part of India. They do not believe in idol worship and they try to create hatred between different religious groups. He also stated that the people were by and large afraid of them and reluctant to come forward and depose against them. According to him, actions of SIMI are a threat to national integrity and communal harmony of the country. He also stated that the SIMI activists were somewhat under control because of the ban and continuous surveillance but still, they were conducting their activities in a clandestine manner. He also stated that they were trying to re-group themselves under different names, one of which was "Tehrique-Khilafat". Ex.P-75 contains a list of 48 cases registered against SIMI activists under the Unlawful Activities (Prevention) Act, 1967 after the

imposition of ban on SIMI. In his cross-examination, he stated that he had information about some persons, who were controlling/running "Tehrique-Khilafat" but in public interest, he was not willing to disclose their names. In the list Exhibit P-75 filed by him, there was one FIR registered in January, 2003 and the cases mentioned therein were the only cases registered in the state of Madhya Pradesh after the imposition of first ban on SIMI. He also stated that the cases against SIMI activists were registered only after satisfaction that they were SIMI activists.

No witness was produced by SIMI at Bhopal also, nor anybody from public came forward to make a statement.

Another sitting of the Tribunal was held at Pune, Maharashtra, for recording the statements of the witnesses from the State of Maharashtra. PW-34 Dr.Dhyaneshwar Sadashiv Chavan, Assistant Commissioner of Police, Crime Branch and Sepcial Branch, Aurangabad, Maharashtra proved his affidavit Ex.P-76 and the documents Ex.P-77. He also tendered in evidence the affidavit Ex.P-77 of Shri Vikram, Inspector of Police, P.S. City Chowk, Aurangabad and Ex.P-79 of Mr.Ambadas B.Pote, Asstt. Commissioner of Police, Mumbai. He also placed on record the documents Exs.P-78 and P-80(colly). In Ex.P-76, P-77 and P-79, the three Police Officers have given details of the cases registered against SIMI activists after imposition of ban. They also stated about the activities of SIMI members, who were trying to create hatred

between Hindus and Muslims and create law and order problems. The CR.No.153/2002 registered at Jinsi P.S. was under Sections 153-A, 120-B IPC read with Section 10 of the Unlawful Activities (Prevention) Act, 1967. This case was merged with CR.No.156/2002, which was in connection with a bomb blast on 2.12.2002 in which two persons were killed and 49 persons were injured. On 27.12.2002, accused Dr.Mohammed Abdul Matin Abdul Basit was arrested. POTA was invoked. In the course of interrogations, he disclosed that he was a partner of M/s. Pragma Soft Technologies, Aurangabad and he and his partners were running this Company for SIMI activists. The office of M/s.Pragma Soft Technologies was raided on 28.12.2002. Computer sets, CDs, floppies, hard disks, photographs etc. were recovered, which revealed pictures of Godhara incident/riots and included appeal to Muslims to come together and declare "Jehad" against Hindus and India. The accused arrested in this case were activists of SIMI, who were advocating Islamic fundamentalism and creating hatred between Hindus and Muslims. The details of the articles seized from M/s. Pragma Soft Technologies are contained in Panchnama, which is on page 141 of Ex.P-80 (colly). Floppy No.12, which was recovered, contained scenes of the blowing of World Trade Centre at U.S.A. and out of 30 CDs, CDs No.22, 23 and 24 contained material for creating hatred in the minds of Muslim youth against Hindus. In his cross-examination by learned counsel for

the SIMI, he stated that prior to imposition of ban in the year 2001, SIMI was having its office at Murmura Masjid, Chilipura, Aurangabad. They had no official list of SIMI members. The cases registered at P.S. Aurangabad were still pending. He had no document in regard to the illegal transfer of funds to SIMI but this information was received by him through sources and interrogations of the accused. He denied that he was deposing falsely.

PW-35 Shri S.S.Deshmukh, Inspector of Police, Crime Branch, Amrawati, Maharashtra proved his affidavit Ex.P-81 and the documents Ex.P-82 (colly). In his affidavit, he stated that after the ban imposed on 27.9.2001, they had asked their staffers to keep secret watch on the activities of the accused Mujahid Sadiqui and Anish Ahmed Shafiullah Khan, both of whom were active members of SIMI. The reports came that they were still creating communal disharmony. Cases were registered against them. Newspaper articles supporting Osama Bin Laden as well as SIMI were published in an Urdu daily newspaper and accordingly, the printer and publisher thereof were challaned. He added that SIMI activists propagated self determination in Punjab and Kashmir and they also propagated "Jehad". In his cross-examination, he stated that by right of self-determination as mentioned in his affidavit, he meant that SIMI activists do not consider Kashmir as part of India. In answer to a question by learned counsel for SIMI, he stated that SIMI activists

propagate break up of Kashmir from India and in that sense, they use the word "self-determination" or "secession". He denied the suggestion that he was deposing falsely with a view to support the Central Government. No other question was put to him. PW-36 Shri Motilal Nagesh Chavan, Asstt. Inspector of Police, Special Branch-I, CID, Sholapur City, Maharashtra proved his own affidavit Ex.P-83 and the affidavits Ex.P-84, P-86, P-88, P-90, P-92, P-94 of other Police Officers, who were his colleagues. He identified the signatures of those Officers on their respective affidavits. He also proved on record the true copies of the documents attached with those affidavits. In these affidavits, details of the cases registered under Unlawful Activities (Prevention) Act, 1967 after 27.9.2001, were given. PW-36 specifically stated that the SIMI activists keep close touch with different militant Organizations and obtain funds also from illegal sources. In his cross-examination, he stated that he was not an Investigating Officer in any of the cases against SIMI activists as he was a Nodal Officer only. He had not maintained any record of the SIMI activists/members in his area. He denied that he was deposing falsely with a view to support Central Government.

PW-37 Shri Achyut Shamrao Pawal, Superintendent of Police, Camp Division, Malegaon, Nasik, Maharashtra proved his own affidavit Ex.P-100 and the affidavits Ex.P-101, P-102, P-105, P-107, P-109, P-111 and P-112, which were signed and verified by his colleagues.

He identified their signatures on their respective affidavits. He also proved on record the documents attached with affidavits, which were true copies of the official documents. This witness was controlling and supervising the communal affairs in Malegaon City. He stated that after imposition of ban, several cases were registered against the activists of SIMI and gave details thereof. He also stated that because of the control and regular surveillance, the activities of SIMI were comparatively under control but added that SIMI activists were still in touch with different militant Organizations and were propagating right of self determination in Punjab and Kashmir. In his cross-examination, he stated that SIMI had no office in the area of P.S. Malegaon but added that after the imposition of ban, SIMI activists had gone underground. He admitted that along with this affidavit, copies of seized posters had not been filed. Learned Additional Solicitor General, however, pointed out that the copies of these posters were produced before the Tribunal in the first Inquiry and the same have been produced with the charge sheet. He denied that he was deposing falsely with a view to support Central Government. PW-38 Shri Devidas Gajanan Kale, Asstt. Police Inspector, P.S. Bhingar Camp, Ahmed Nagar, Maharashtra proved his affidavit Ex.P-115 and the documents Ex.P-116(colly). In his affidavit, he also gave details of the activities of SIMI. In his cross-examination, he stated that he had never seen the list of members of SIMI and he did

not know as to whether there was or not any office of SIMI in Ahmed Nagar prior to the imposition of ban. PW-39 Shri Tejbahadur, Sub-Divisional Police Officer, Chalisgaon, Dist. Jalgaon, Maharashtra proved his own affidavit Ex.P-117 and the affidavits of his colleagues Exhibits P-118, P-120, P-122, P-125, P-127 and P-129. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In all these affidavits, the Police Officers have deposed about the cases against SIMI activists and their continuing unlawful activities. They have also stated that had the ban not been there, the SIMI activists would have created more problems in country. In his cross-examination, he stated that he had a list of activists of SIMI and he knew them also. He had, however, not filed that list before the Tribunal. He denied that he was deposing falsely with a view to support Central Government. PW-40 Shri Chhagan, Inspector of Police, P.S. Shirpur, Maharashtra proved his affidavit Ex.P-131 in which, he referred to CR.NO.103/2001 under Unlawful Activities (Prevention) Act, 1967 registered on 28th September, 2001 with Shirpur Police Station. In the said case, two receipts of the Maharashtra Zone of SIMI from the personal search of the accused Sheikh Rafik Shaikh Rashid and one post card with a remark of SIMI and agenda of SIMI written in Urdu from the personal search of accused Abdul Kayyum Husein Shah, were recovered. The case was still pending. However, the receipts recovered from the

accused were of the year 1997 and September, 2000, i.e., before the imposition of ban. He stated that he had never come across a list maintained by SIMI regarding its members.

PW-41 Shri Dattatreya, Asstt. Commissioner of Police, Crime Branch, Sholapur City, Maharashtra proved his affidavit Ex.P-133 and P-134 and the documents Ex.P-135 (colly) and P-136(colly). In his affidavit Ex.P-133, he had stated that a case under Section 4,5 & 6 of the Explosives Act, 1908 was registered at Solapur City on 8.8.2003 and on 18.8.2003, Sections 3,4, & 5 of POTA were also added. He gave details of the case as to how three accused were found designing "Sutli Bombs" and were found in possession of 8 "Sutli Bombs" and material for manufacturing bombs. He also gave details of case CR.NO.3142/2003 under different Sections of the Explosive Substances Act, 1908 and stated that on 14.8.2003, from the house of accused Anwar Hussain Gulab Hussain Sheikh, one "Aawaan form" was seized, which contained a pledge of SIMI Organization. The accused made confessions under Section 32 of Prevention of Terrorism Act, 2002 and admitted that they were SIMI activists and their ultimate aim was spread of terrorism. CDs were also recovered containing provocative speeches of Maulana Azhar Masood, the terrorist leader of Jaish-E-Mohammed. When it was clear that these persons were SIMI activists, Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 were also added. In his

cross-examination, he stated that he was the Investigating Officer in CR.No.3142/2003 and had found that the accused involved in this case were SIMI activists. He added that they had seized membership forms of accused Ibrahim Momin in regard to his admission to SIMI, which was on page 57 of Ex.P-135. It contained the name and address of accused Mohammad Ibrahim Momin and contained his signatures on the pledge to join SIMI. He admitted that this document was not bearing the signatures of the President or any office bearer of SIMI. He, however, added that this form was seized by them from the house of main accused Anwar Hussain Sheikh.

PW-42 Shri Uttam, Inspector of Police, Vigilance Cell, Cast Certificate Verification, Arurangabad, Maharashtra proved his affidavit Ex.P-137 and the documents Ex.P-138. He was a Police Inspector attached with Ambajogai Police Station, Maharashtra and was Investigating Officer in CR.No.71/2001 under Section 10 of the Unlawful Activities (Prevention) Act, 1967 registered on 28.9.2001. He admitted in his cross-examination that after September, 2003, no fresh case had been registered against any SIMI activist but stated that SIMI activists were indulging in their activities secretly and people were afraid of them. He also stated that the earlier cases registered against the accused were still pending and no trial had so far ended in conviction.

PW-43 S. [redacted] hesh, Sub-Divisional Police Officer, Nanded (Rural), Distt. Nanded, Maharashtra proved on record his affidavit Ex.P-139 and the affidavits of his colleagues Exhibits P-140, P-142 and P-144. He identified the signatures on their respective affidavits as he had seen them signing many times. He also placed on record the documents attached with the affidavits. In his affidavit Ex.P-139, this witness gave details of the cases registered after the imposition of first ban on SIMI and stated that SIMI activists were still continuing with illegal activities secretly. In his cross-examination, he stated that he had not read the Constitution of SIMI as they had none. He also admitted that no case had been registered after September, 2003 against any SIMI activist. He, however, added that they were under control because of surveillance.

PW-44 Shri Gangadhar, Police Inspector, Distt. Spl.Branch, Maharashtra, proved his own affidavit Ex.P-146 and the affidavits of his colleagues Exhibits P-147 & P-149. In his affidavit, he also stated that SIMI activists were still indulging in unlawful activities and were operating secretly. In his cross-examination, he admitted that no case had been registered against SIMI activists after September, 2003 and added that they were indulging in their activities secretly. He stated that the cases mentioned in his affidavit were still pending trial.

PW-45 Shri Kashinath Laxmanrao Marwalikar, S.D.P.O. of Police, Basmat Division, Distt. Hingoli, Maharashtra placed on record his own affidavit Ex.P-151

and the affidavit of his colleague Ex.P-152. In these affidavits, it was stated that SIMI activists were still indulging in unlawful activities. However, in his cross-examination, this witness stated that no case had been registered against any SIMI activist after September, 2003.

PW-46 Shri Nitin Prabhakar Lohar, Sub-Divisional Police Officer, City Division Akola, Maharashtra, proved his affidavit Ex.P-154 and the affidavits of his colleagues Exhibits P-155, P-157, P-158, P-159, P-163 & P-165. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In all these affidavits, PW-46 and his colleagues had given details of the cases registered against different accused after the imposition of first ban on SIMI on 27th September, 2001. PW-46 specifically referred to an accused Amin Rana, who was arrested in Crime No.3177/2001 dated 17.12.2001 and stated that he was an active member of SIMI and has assaulted two Hindus saying that call for "Jehad" was being given and had been making provocative speeches, which were capable of breaking riots between Hindus and Muslims. The criminal case was still pending against him. PW-46 gave details of some more cases in which SIMI activists were involved. He also stated that these SIMI activists propagate self determination in Punjab and Kashmir and advocate Pan Islamic Fundamentalism. He also stated that they were obtaining funds from illegal sources and were in close touch with different militant

organizations. It is worth mentioning that hardly any cross-examination was carried out to show that he was deposing falsely. A bald suggestion was given to him that he was deposing falsely with a view to support the Central Government. The only other question put to him was that no case had been registered against SIMI activists after September, 2003. PW-47 Shri Martand Nanarao Patil, Inspector of Police, attached to Wasim Police Station, distt. Wasim, Maharashtra, proved his affidavit Ex.P-167 and the documents Ex.P-168(colly). He also gave details of a case registered on 28th September, 2001 against a SIMI worker and deposed that even after imposition of the first ban, the SIMI activists are propagating right of self-determination in Punjab and Kashmir and tried to spread hatred between Hindus and Muslims. He admitted that no case had been registered after September, 2003 against any SIMI activist but stated that they have been recording secret informations in the dossiers, which are confidential.

PW-48 Shri Sunil Devidas Kadasne, Sub-Divisional Police Officer, City Division Malkapur, Distt. Buldana, Maharashtra, proved his own affidavit Ex.P-169 and the affidavits of some of his colleagues Exhibits P-170, P-172, P-174, P-176, P-178, P-180 and P-182. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. He proved on record the documents attached with those affidavits. In his own affidavit Ex.P-169,

he gave details of different cases registered against SIMI activists after the imposition of first ban and added that SIMI activists propagate right of self-determination in Punjab & Kashmir and they call non-Muslims “Kafirs”. He stated that even after the initial ban imposed on 27.9.2001, the SIMI activists were indulging in activities, which create communal disharmony, communal hatred and a threat to national integrity. In his cross-examination, he admitted that no case had been registered against any SIMI activist after September, 2003 but stated that it was mainly on account of their surveillance. He denied the suggestion that he was deposing falsely with a view to support the ban on SIMI.

PW-49 Shri Dayaram Bal Singh Chavan, Sub-Divisional Police Officer, Vani Distt. Yavatmal City, Maharashtra proved his affidavit Ex.P-184 and the affidavits of his colleagues Exhibits P-185, P-187, P-189, P-191, P-192 and P-195. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. He proved on record the documents attached with the affidavits. He admitted in his cross-examination that after September, 2003, no case had been registered against any SIMI activist. He, however, stated that it was on account of their surveillance and also added that they have been recording secret informations regarding them in their dossiers. PW-50 Shri Manish Vithal Ajinkya, Assistant Commissioner of Police, Kalwa Division, Thane, Maharashtra, proved

his affidavit Ex.P-187 and the affidavits of his colleagues Exhibits P-198, P-201, P-203 and P-205. He identified the signatures of his colleagues on their respective affidavits as he had seen them signing many times. In his cross-examination, he admitted that no case had been registered against any SIMI activist after September, 2003. He denied that both the cases registered at Thane had ended in acquittal. He stated that he had read the Constitution of SIMI according to which the membership of a person comes to an end when he attains the age of 38. He, however, volunteered that such persons continue to work for SIMI thereafter also. He admitted that the age of accused Mohd. Aziz Mohd. Baksh Qureshi, who was in CR.No.211/2001, was about 60 years.

PW-51 Shri Waman Mahaduji Turukmane, Under Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai, proved his affidavit Ex.P-207 and the public notice issued regarding sitting of the Tribunal Ex.P-208 (colly). PW-52 Shri Chandrakant, Police Inspector, attached to Wardha City Police Station, Wardha, Maharashtra proved his affidavit Ex.P-209 and the documents Ex.P-210 (colly). In his affidavit, he stated that after the first ban on SIMI on 27.9.2001, they had asked their staffers to keep secret watch on the activities of the accused mentioned in his affidavit and it was found that they were still indulging in illegal activities and were members of SIMI. A raid was conducted. In the house search of accused Sayyad Mushtaq

Ali, flag of SIMI, Banner of SIMI, Pamphlets, Books, Poster of Osama Bin Laden came to be seized. He also stated that these accused propagate self determination in Punjab and Kashmir and also propagate "Jehad". Their object is to create hatred between Hindus and Muslims and destroy national integrity. In his cross-examination, he admitted that after September, 2003, no case had been registered against any SIMI activist.

PW-53 Shri Vasant Champatrao Sayam, Police Inspector attached to Police Station Hinganghat, Maharashtra, proved his affidavit Ex.P-211 and P-212 in which, details of the cases against SIMI activists were given. He also admitted that after September, 2003, no case had been registered against any SIMI activist but stated that the SIMI activists were under control due to their surveillance. PW-54 Shri Suraj Ashor Ramshankar Choubey, Police Sub-Inspector, attached to Crime Branch, Amravati, Maharashtra, PW-55 Shri Sudam Sadhu Rakhapasare, Police Inspector, attached to Kalyan Railway Police Station, Mumbai Railway, PW-56 Shri Nivrutti Kushabhau Murade, Padgha Police Station, Thane, Maharashtra and PW-57 Shri Sudhir Anantrao Bekenkar, Assistant Inspector of Police, attached to Kurla Police Station, Mumbai, Maharashtra, deposed on the lines of PW-53 Shri Vasant Champatrao Sayam and proved their affidavits. Their examination-in-chief and cross-examination was almost identical to that of PW-53.

PW-58 Mrs. Supriya Patil Yadav, Deputy Commissioner of Police (Security), SID, Mumbai, Maharashtra, proved her affidavit Ex.P-223 and stated that after taking over as DCP (Security) in September, 2003, she had found that the activities of SIMI were still continuing secretly and causing lot of Law and order problems. She stated that they try to disturb communal harmony and were still distributing pamphlets surreptitiously. She had found that SIMI had connections with terrorist groups like Lashkar-E-Toeba and Al-Qaeda and were collecting funds from foreign countries. She added that if ban on SIMI is lifted, they would come out openly and threaten national integrity. In her affidavit, she had given details of various cases registered against SIMI activists after September, 2003 and stated that some of the SIMI activists were making statements that Osama Bin Laden should send his forces to India to teach a lesson to Indians. They were also saying that Osama Bin Laden will destroy all non-Muslim countries and bring Muslim regime all over the world and green flags would be hoisted all over. She also referred to a CR case No.3010/2003, which was registered at Thane Nagar P.S. under Sections 10, 13 & 15 of Unlawful Activities (Prevention) Act, 1967. She stated that from the search of accused Sahid Ismail Narekar and Anis Ismail Narekar, a map of India was recovered in which Kashmir was shown as part of Pakistan. Receipts of SIMI membership and other documents were also recovered.

In the Tribunal's sitting at Udaipur, Rajasthan, PW-59 to PW-69 were examined. PW-59 Shri Vinod Singh, A.S.I., P.S. City Kotwali, Bikaner, Rajasthan tendered his affidavit Ex.P-224 as his examination-in-chief and the documents Ex.P-225 (colly). In his affidavit Ex.P-224, he mentioned about an FIR registered on 29.9.2001 at Bikaner, Rajasthan, under Section 10 of the Unlawful Activities (Prevention) Act, 1967. This FIR was registered against one Mohd. Rasid Shekh, President of SIMI at Bikaner. He also stated that SIMI activists propagate self determination in Punjab and Kashmir and create hatred between Hindus and Muslims to damage the secular fabric of society and destroy national integration. In his cross-examination, he admitted that the investigation of this case was handed over to him at a later stage and he was not present at the time of the recovery from the accused. He also could not say as to whether the pamphlets recovered from the said accused was printed prior to 27.9.2001 or thereafter. He had not taken into possession any records to show that Mohd. Rasid Shekh was the President of Bikaner Unit of SIMI. He also stated that there was no record regarding secret informations and surveillance as these are secret matters.

PW-60 Shri Naresh Chita, Deputy S.P., RAC II Bat., Distt. Kota, Rajasthan proved his affidavit Ex.P-226 and the documents Ex.P-227 (colly). He deposed about a case registered at District Jhalawar,

Rajasthan on 28.9.2001 under Section 10/13 of the Act as well as 153-A IPC against one Zakir Raza, who had distributed certain pamphlets/posters of SIMI. Some pamphlets were also recovered from him. He also stated that the SIMI activists propagate right of self determination in Punjab and Kashmir. The pamphlet recovered from the pocket of the accused is on Page-135 of Ex.P-227 (colly) which was calling people to join SIMI in spite of the fact that it had been banned. In his cross-examination, this witness admitted that they could not seize any record to show that accused Zakir Raza Qureshi was a member of SIMI and they also could not find out as to who had got these pamphlets printed and on what date. However, the posters mentioned in his affidavit were found pasted on the walls of Tek-Wali Masjid. He stated that by 27.9.2001, they have received a copy of the Gazette Notification. He also stated that the pamphlets recovered from the accused showed that the accused was propagating right of self determination in Punjab and Kashmir and was also advocating "Jehad".

PW-61 Shri Om Prakash, Inspector of Police, P.S.Sewar, Distt. Bharatpur, Rajasthan also proved his affidavit Ex.P-228 and the documents Ex.P-229 (colly). He deposed about a case registered under Section 10/13 of the Act on 5.10.2001 against accused Harun Rashid and Anwar Ahmad, who were activists/office bearers of SIMI. These accused were arrested while they were addressing a meeting at Jama

Masjid, Wazirpur in which, they were advocating and propagating Pan Islamic Fundamentalism and using derogative language for Hindu Deities. In his cross-examination, he, however, stated that he had not seen the accused making speeches or propagating Pro-Islamic Fundamentalism as investigation of this case was handed over to him at a subsequent stage. He had sworn this affidavit on the basis of the records of the case. He could not seize any documents to show that the accused were members of SIMI. However, a perusal of the FIR and other documents, which are on page 143 to 149 of the file, regarding this case, show that the accused were making speeches against ban on SIMI and asking for funds for it. This witness denied the suggestion that he was deposing falsely under the pressure of Central Government.

PW-62 Shri Ram Gopal, A.S.I., Police Lines, Distt. Baran, Rajasthan proved his affidavit Ex.P-230 and the documents Ex.P-231 (colly) He deposed about a case registered on 5.10.2001 at P.S. Siswali, Distt. Baran in which one Mohammed Sharif was arrested while he was explaining to gathering, the principles and objects of banned organization SIMI and was provoking the people against the ban. In his cross-examination, he stated that no such meeting had come to his notice after 5.10.2001 as such meetings are held secretly. He stated that the speech of Mohd. Sharif was not tape recorded or video recorded. He had

not seen the records to show that accused Mohd. Sharif was a member of SIML.

PW-63 Shri Banshidhar, S.I. of Police, Dausa Police Lines, Distt. Dausa, Rajasthan proved his affidavit Ex.P-232 and the documents Ex.P-233 (colly). He deposed about a case registered on 28.9.2001 when the office of SIMI at Talab Para, within the jurisdiction of Kotwali Baran was raided and it was found that Abdul Matin, President and Mohd. Ilias, Secretary of the banned organization SIMI were propagating principles of SIML. In his cross-examination, he stated that he had investigated the case subsequently and he was not present at the time of raid. He also stated that he has no records to show that Abdul Matin and Mohd. Ilias were the office bearers of SIML. He denied that he was making a false statement. PW-64 Shri Bhagat Singh, S.I., Police Lines Baran, Distt. Baran, Rajasthan proved his affidavit Ex.P-234 and the documents Ex.P-235 (colly). He deposed about a case registered on 2.10.2001 at P.S. Chabra, Distt. Baran in which Shekh Ikbāl Kaji, an active member of SIMI was arrested while he was propagating the aims and objects of SIML. He stated that SIMI activists propagate self determination in Punjab and Kashmir and call non-Muslims "Kafirs" and say that they have no right to exist. He had also not joined the raiding party and investigated the case subsequently. He had not seized any records to shown that Shekh Ikbāl Kaji was a member of SIML. PW-65 Shri

Rajendra Ojha, P.S. Sardarpura, Jodhpur, Rajasthan proved his affidavit Ex.P-236 and the documents Ex.P-237 (colly). He deposed about an FIR registered at P.S. Udyog Nagar, Distt. Kota Rajasthan on 18.10.2001 in which accused Sabirudeen was arrested while displaying a poster of SIMI on the wall of his shop. In the search, more posters were found from his shop in which two guns crossing each other and some other objectionable material was recovered. This witness had partly investigated the case. He stated that SIMI activists were comparatively under control because of the ban and surveillance on them. He also stated that they were in touch with certain militant organizations. The copy of the poster recovered in this case has been placed on Page-397 of Ex.P-237 (colly) and its translation is on Page-399. In his cross-examination, this witness admitted that he could not find out as to when and by whom this poster was printed. He also could not find out as to on what date and on what time this poster had been pasted.

PW-66 Shri Jeet Ram, S.I., P.S. Panchauri, Distt. Nagaur, Rajasthan proved his affidavit Ex.P-238 and the documents Ex.P-239 (colly). He deposed about an FIR registered on 29.9.2001 at P.S. Kote Gate, Bikaner. In this case, one Niyamat Ali, a President of SIMI at Bikaner was arrested and from him, some unlawful literature and pamphlets of SIMI were recovered. This witness had investigated the case after the registration of the case. The copies of the documents

recovered from the accused consisted of one admission form and a proforma of receipt for receiving donations, which are on Page-451 and Page-453. In his cross-examination, this witness stated that the papers recovered from the accused showed that he was an activist of SIMI. However, no other record could be found to show that he was an enrolled member of SIMI. He also could not say as to whether the pamphlets recovered from the accused were printed prior to September, 2001 or thereafter.

PW-67 Shri Manish Agarwal, Deputy S.P., Circle Girwa, Distt. Udaipur, Rajasthan, proved his affidavit Ex.P-240 and the documents Ex.P-241 (colly). He deposed about a case registered on 29.9.2001 against Dr.Mohammed Hasan, who was actively participating in the activities of SIMI as its Zonal President. He also stated that SIMI propagates self determination in Punjab & Kashmir and obtains funds from illegal sources. They spread communal hatred. In his cross-examination, he admitted that nothing incriminating was recovered from personal search of Dr. Mohammad Hasan but incriminating material was recovered from his residential houses at Saran and Jodhpur. He also stated that prior to 27.9.2001, this accused was on official duty but after 27.9.2001, he left his headquarter without any sanctioned leave. He did not know that this accused had been reinstated under the orders of High Court. He, however, admitted that the trial of the case had been stayed

by the High Court. He stated that the facts mentioned in para 5 of his affidavit were on the basis of intelligence reports and secret sources. He stated that they do not make entries in regard to such informations in the daily diary as they are secret and sensitive in nature and recording thereof is not in public interest.

PW-68 Shri Khema Ram, S.I. of Police, P.s. Nasirabad Sadar, Distt. Azmer, Rajasthan, proved his affidavit Ex.P-242 in which he deposed about case FIR No.102/2001 registered at Bapawar Kalan P.S., Kota Rural District on 28.9.2001. This case was registered when this witness had seen a pink colour pamphlet stuck on a wall of Mazjid in which provocative remarks were made against Hindus and it had been issued by SIML. On enquiry, it was found that accused Yunus had pasted this pamphlet on the wall. A photocopy of this pamphlet is on Page -635 and Page-637 of Ex.P-243 (colly). In his cross-examination, this witness stated that the seizure as well as investigations were conducted by him. He did not know as to when this pamphlet was printed or published. He also could not say as to whether it was printed prior to 27.9.2001 or thereafter. He could not find out as to when and by whom it was printed as the activities of SIMI were secret. He stated that accused Yunus was not a recorded member of SIMI but was a follower of SIMI. He denied the suggestion that he was deposing falsely at the instance of Central Government.

PW-69 Shri Pyare Lal, Dy. Superintendent, Special Branch, CID Headquarter, Jaipur proved his affidavit Ex.P-244 in which he stated that after the first ban on 27.9.2001 against SIML, several cases were registered against the office bearers/activists of SIML. He gave particulars of these case in his affidavit and added that SIML activists propagate right of self determination in Punjab and Kashmir and call all non-Muslims "Kafirs", who had no right to exist. They also use derogatory language against Hindu Deities and their aim is to establish Pan Islamic Order in the world. In his cross-examination, he stated that in none of the cases, final judgement had come so far and all these cases were registered up to 18.10.2001. He admitted that no case had been registered thereafter but added that it was for the reason that they were keeping strict surveillance over SIML activists. He denied the suggestion that he was deposing falsely. The affidavit of Shri Abhay Kumar, District Magistrate, Udaipur, was tendered in evidence to show that a public notice was issued in regard to the sittings of the Tribunal at Udaipur.

In the sitting of the Tribunal at Ahmedabad, PW-70 Shri P.S.Parmar, Inspector of Police, Khambhat City P.S., Distt. Anand, Gujrat proved his affidavit Ex.P-247 and the documents Ex.P-248 (colly). In his affidavit Ex.P-247, this witness gave details of a case registered at Karanj P.S. On 30.9.2001 under Unlawful Activities (Prevention) Act,

1967 when 25-30 persons connected with SIMI had gathered at Old Jama Masjid with banners etc. Asif Mustafa Husen Shaikh was giving a speech in which, he was condemning U.S.A. for attack on Osama Bin Laden and was also criticising the ban imposed by Central Government on SIMI. He was inciting people to oppose the ban and even the banners were to this effect. 11 persons were arrested as others managed to escape. They admitted that accused Asif Mustafa Husen Shaikh was a members of SIMI since 1990. An old card of SIMI was found from accused Javed Akhtar Munaf Shaikh. This witness stated that had there been no ban, the SIMI activists would have caused grave and serious consequences to the secular fabric and the security of the country. This witness was not cross-examined as none was present on behalf of SIMI.

PW-71 Shri M.J.Pancholi, Police Inspector, Pollice Headquarters, Anti-Corruption Bureau, G.S., Ahmedabad, proved his affidavit Ex.P-249 and the documents Ex.P-250 (colly). In his affidavit, he stated that on 27.12.2001, a secret information was received that SIMI activists were planning to conduct a secret meeting at Surat at Rajshree Hall on the topic of "Promotion of constitutional educational provision for minorities". Rajshree Hall was booked in the name of Alif Sajid Mansuri from 27.12.2001 to 29.12.2001 and inquiries revealed that he was a national level worker of SIMI. Inquiries from Delhi further revealed that no organization under the name of All India Minorities

Board exists at the given address in Delhi and as such, a search was conducted at the Hall on 28.12.2001. 123 persons were found present there. On search of these persons, literature, pamphlets relating to SIMI were recovered, some of which were poems eulogising Osama Bin Laden and praising him for his heroic actions in U.S.A. An FIR under Sections 3, 10, 13 & 15 of the Act was registered and in the course of investigations, evidence revealed that they were SIMI activists but were organising a meeting under the cover of All India Minorities Education Board. It was also revealed that these activists do not consider Kashmir to be a part of India and they describe militant activities there as freedom struggle. They do not believe in the Constitution of India and consider non-believers of Islam as "Kafirs". This witness was also not cross-examined as none was present on behalf of SIMI.

PW-72 Shri Jashvantsinh R.Vaghela, Sub-Inspector of Police, Karelibaug P.S., Vadodara City, Gujrat proved his affidavit Ex.P-251 and the documents Ex.P-252 (colly). He deposed about the case CR.No.27/2002 registered at P.S. Sayajigunj on 4.1.2002. SIMI literature was recovered from the accused, who were encouraging others to join SIMI, which was already a banned organization. The names of the arrested accused were found in the list of members of SIMI found at Kin out post of Surat District. Thereafter, literature was recovered including a magazine, which was to cause hatred between Hindus and

Muslims. He also stated that SIMI activists do not consider Kashmir to be a part of India. This witness was also not cross-examined as none was present on behalf of SIMI.

PW-73 Shri Ramanbhai Singaji Bhagora, Asstt. Commissioner of Police, I/C, Deputy Comm. Int. CID, I.B., Gujrat proved his affidavits Exhibits P-253 & P-254 and the public notice Ex.P-255. PW-74 Shri A.K.Jain, Joint Secretary, Ministry of Home Affairs, Government of India proved his affidavit Ex.P-256 along with its annexures. He also proved on record the letter Ex.P-257 signed by Shri Jag Ram, Deputy Secretary, Ministry of Home Affairs, Government of India, and the background note Ex.P-258, which was prepared on the basis of inputs received from the State Governments as well as intelligence agencies in regard to the activities of SIMI. He stated that on the basis of the information received from States and the inputs from intelligence agencies, the Central Government was of the opinion that SIMI, against whom a ban was already operating, should be banned for a further period of two years as the unlawful activities of this Association had not abated and it had shown strong propensities to continue to commit unlawful activities covered under the Act. He proved on record the documents Ex.P-259 (colly). He had brought with him the file containing secret intelligence reports and inputs which he was willing to

place before the Tribunal for perusal. This witness was also not cross-examined on behalf of SIMI as none was present on its behalf.

PW-75 Shri Hukam Chand, Sub-Inspector of Police, Special Cell, Lodi Colony, New Delhi proved his affidavit Ex.P-260 and the documents Ex.P-261 (colly). In his affidavit Ex.P-260, he stated that he was an Investigating Officer of case FIR No.13/2002 registered at P.S. Special Cell, (S.B.), Lodi Colony, New Delhi, registered on 27.5.2002 under Sections 3,10 & 13 of the Unlawful Activities (Prevention) Act, 1967 and 120-B, 124-A IPC. He also stated that in the course of investigations when evidence in respect of Prevention of Terrorism Act came on record, the investigations were handed over to Shri L.N.Rao, Assistant Commissioner of Police. He deposed that on 27.5.2002, Inspector C.B.Sharma of Special Cell, received information that two SIMI activists/members were pasting stickers on the eastern wall of Jamia Millia Islamia Urdu Library upon which DD entry was made and thereafter, in the raid, accused Mohd. Yasin Patel alias Falahi and Mohd. Ashraf Zafri were arrested. Copies of the stickers were found from their possession also and it was found that these stickers were containing anti-nation slogans. Some of these stickers were found from the house also of accused Mohd. Yasin Patel and during their disclosure statements, they admitted their connections with SIMI. They were tried by the designated Court and were convicted under Section 20 of POTA and 124-A IPC,

which offences fall within the meaning of unlawful activities. Copy of the stickers in question has been placed on record and is on page 39 of Ex.P-261 (colly). This sticker gives a call for destroying nationalism and establishing Kilafah. It has been issued by SIMI and the pictures thereon show a fist in which certain missiles are shown to suggest mutiny. In his cross-examination, he admitted that both the accused were convicted under POFA but not under Unlawful Activities (Prevention) Act, 1967. He also admitted that he had not come across any list of SIMI members.

PW-76 Shri C.B.Sharma, Inspector of Police, Special Cell, Lodi Colony, New Delhi proved his affidavit Ex.P-262 and the documents Ex.P-263 (colly). In his cross-examination, he admitted that he was examined before the first Tribunal and in that statement also, he had referred to FIR No.532/2001, which he had referred to in his affidavit Ex.P-262. He, however, volunteered that at that time, the case was under investigation but now, a challan had been filed. He, however, was made to admit that challan was filed in the Court on 20.12.2001 and he was examined before the Tribunal in January, 2002. He admitted that he had never seen any list or register of the membership of SIMI. He denied the suggestion that he was deposing falsely with a view to support the Central Government.

After the close of evidence by Central Government, the respondent-Association examined RW- 1 Shri Shahid Badar, its erstwhile

President. He proved on record his affidavit Ex.R/A and stated that this affidavit along with schedules may be read as his examination-in-chief. He stated that the reply filed to the show cause notice was filed under his instructions and Annexure A to the said reply was a photocopy of the Constitution of SIMI.

In his affidavit, he has stated that the appeal filed against the order of the Tribunal regarding first ban was pending in the Supreme Court. He has stated that the notification issued by the Central Government is in violation of the decision of the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* reported in (1995) 1 SCC P-428. The background note and the notification issued by the Central Government suffer from suppression of material facts and are based on false statements. According to him, SIMI, which was established on 25.2.1977, was a social, cultural and religious organization for the welfare of all persona in India. After re-producing the Constitution, he has stated that the SIMI's policy has never been to challenge the territorial integrity of the country nor it has ever incited communal violence in the country. It has undertaken several social service programmes in the country including providing relief to the victims of earthquake in Gujrat. Even on Babri Masjid issue, its role has been very constructive as it has been saying that since the matter is sub-judice, the structure and status quo should be maintained. According to him, SIMI

has faith in the Constitution of India. He has stated that between 27.9.2001 and 26.9.2003, SIMI has ceased to exist and, therefore, there was no activity to attract fresh notification under the Act of 1967. Raising various legal pleas, it is stated that the notification issued by the Central Government is mechanical, without application of mind and without there being any sufficient cause to issue the same immediately. He also says that in the last over two years, there has been no incident by SIMI or its erstwhile members, which may fall within the mischief of Section 2(g) or 2(f) of the Act. Many SIMI members have been acquitted by the Courts and after the crackdown on SIMI and its members after the notification of 2001, the work of SIMI has come to a standstill and there has been no activity. Regarding case FIR No.13/2002 registered at P.S. Lodi Colony, New Delhi, he says that the accused have been acquitted of the charges of Unlawful Activities (Prevention) Act, 1967. He has also given details of some other cases in which the SIMI activists have been acquitted. He has stated that while issuing the fresh notification on 26.9.2003, the Central Government has just repeated the grounds/reasons, which were used for issuing earlier notification dated 27.9.2001 and as such, the subsequent notification is mala fide exercise of powers. No hearing was given to SIMI before issuing the notification in question and it was issued with ulterior motive and in an arbitrary manner. It is stated that there is no material or unlawful act under

Section 2(f) and 2(g) of the Act to bring the Association within the ambit of the Act and as such, the notification in question cannot be sustained. He has denied that SIMI was in any manner associated with organizations like Jamaat-E-Islami Hind, Students Islamic Association or World Association of Muslim Youth. The meaning of "Jihad" is stated to be war against evil and nothing else. It is denied that SIMI is having connections with Hizbul Mujahidin, Lashkar-E-Toeba or other Muslim terrorist Organizations or that it had ever advocated self-determination in Kashmir. It is also stated that SIMI believes in the Constitution of India and has never eugolized Osama Bin Laden, Sheikh Mohd. Yasin or Gulbudin Hikmatyar. SIMI's involvement in the bomb blasts is also disputed and it is stated that there is no material on record to connect the involvement of Abdul Momin in the blast in U.P. It is stated that SIMI had never issued any pamphlet showing Kashmir not to be part of India or calling Muslims to fight against Hinduism. It is emphasized that the Central Government has failed to bring forth any ground to show that there has been continuity in the alleged unlawful activities of SIMI. Along with the affidavit, schedules are filed to show the status of cases in which the accused have been acquitted or have died, the list of cases in which the Government of India has not given prior sanction for prosecution, the list of cases which are pending, the list of cases which were dealt with by the previous Tribunal.

In his cross-examination by learned ASG he has admitted that he had appeared as a witness before the previous Tribunal also. He is unable to say anything about the seizure of books of accounts and records of SIMI by the Police pleading that all their offices have been sealed. He does not know as to whether their bank accounts have been attached or not. He admits that he has not issued any press release to say that after the ban, SIMI has been dissolved or its activities have been suspended. He volunteered to say that he has been saying so but his statement was never printed anywhere since he was in custody soon after the imposition of first ban. He admits that they have not made any application to the Central Government under sub-Clause(2) of Section 6 of the Act for cancelling the notification under Section 3 of the Act on the ground that they have suspended their activities. He has denied the suggestion that even after the ban, he has been running SIMI and trying to increase the propensity of its activities. He has denied that they were receiving any donations or gifts from a foreign country. However, he could not tell the name of any person, friend or relation who had given him financial support for fighting the litigation. He is not in a position to produce any literature or pamphlet or magazine in which he had condemned the terrorism or secessionist demands in Kashmir. He is not in a position to give the date or month of the magazine in which he had issued an article suggesting that the solution to Babri Masjid dispute

could be through peaceful talks. He could not give the dates or exact places where relief camps were held in Gujrat after the earthquake nor could he produce any document to show that such relief camps were held. About Yasin Patel, Abdul Mobin, Mohd. Kaleen Akhtar, Hasan Ahmed, Mohd. Shamshuddin, Shah Alam Mehboob Bashi, Ahmed Akhtar, Abdul Muneed and Shamim Ul Islam Manzoor, he is not in a position to say with certainty as to whether they are SIMI members or not. He does not know that these persons are facing prosecutions as members of SIMI for being engaged in unlawful activities. He has denied the suggestion that the unlawful activities of SIMI are still continuing.

I have heard Shri K.K.Sud, learned Additional Solicitor General of India and Shri Siddharth Luthra for the respondent-Association. I have gone through their written submissions as well as records. The documents/records copies of which were not supplied to Association in public interest were also requisitioned and perused by me.

The gazette notification No.S.O.1113(E) dated 26.9.2003 issued by the Central Government under Section 3 of the Unlawful Activities (Prevention) Act, 1967 reads as under :

"S.O.1113(E) – Whereas the Students Islamic Movement of India (hereinafter referred to as the SIMI) has been indulging in activities which are prejudicial to the security of the country

and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country;

And whereas the Central Government is of the opinion that :

(i) SIMI is in close touch with militant outfits and is supporting extremism and militancy in Punjab, Jammu and Kashmir and elsewhere;

(ii) SIMI supports claims for the secession of a part of the Indian territory from the Union, supports groups fighting for this purpose, and is thus questioning the territorial integrity of India;

(iii) SIMI is working for an International Islamic Order;

(iv) during Ikhwan conferences, the anti-national and militant postures of the SIMI were clearly manifest in the speeches of the leaders who glorified Pan Islamic Fundamentalism, used derogatory language for deities of other religions and exhorted Muslims for Jihad;

(v) SIMI has published objectionable posters and literature which are calculated to incite communal feelings and which question the territorial integrity of India;

(vi) SIMI is involved in engineering communal riots and disruptive activities in various parts of the country;

And whereas the Central Government is also of the opinion that for the aforesaid reasons, the activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association;

Now, therefore, in exercise of the powers conferred by sub-section(1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Students Islamic Movement of India (SIMI) to be an unlawful association;

And whereas, the Central Government is further of the opinion that if the unlawful activities of the SIMI are not curbed and controlled immediately, it will take the opportunity of -

(i) escalating secessionism and supporting militancy;

(ii) instigating communal violence in different parts of the country and thereby disrupting the secular fabric of the country.

And whereas, the Central Government is also of the opinion that having regard to the activities of the SIMI mentioned above, it is necessary to declare the SIMI to be an unlawful association with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section(3) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said

Act, have effect from the date of its publication in the Official Gazette."

Before adverting to the question as to whether or not there is sufficient cause for declaring the respondent-Association unlawful, it would be relevant to notice important provisions of the Act so that this Tribunal is able to focus its attention to the questions raised and consider the material placed before it to make an objective assessment thereof.

Section 2(a) of the Act, which defines the "Association", reads as under :

"2(a) "association" means any combination or body of individuals;"

Section 2(b) of the Act defines the "cession of a part of the territory of India" as under :

"2(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;"

Section 2(f) gives the definition of "unlawful activity" as under :

"2(f) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), -

(i) which is intended, or supports any claim to bring about on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;"

Section 3, which empowers the Central Government to declare an Association unlawful, reads as under :

"3. Declaration of an association as unlawful.-(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that

Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely :-

(a) by affixing a copy of the notification to some conspicuous part of the office, if any of the association; or

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any of the association; or

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed."

Sections 4 and 5 of the Act, which provide for the constitution of the Tribunal and a reference read as under:

"4. Reference to Tribunal-(1) *Where any association has been declared lawful by a notification issued under sub-*

section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section(1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

5. **Tribunal.**-(1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a Tribunal to be known as the "Unlawful

Activities (Prevention) Tribunal” consisting of one person, to be appointed by the Central Government:

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908) while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)."

Section 9 of the Act, which prescribes the procedure to be followed by the Tribunal in holding an inquiry under Section 4 of the Act reads as under :

"9. Procedure to be followed in the disposal of applications under this Act. -Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section(3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908); for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final."

After going through the aforesaid provisions of the Act and keeping in mind the law laid down by the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* reported in (1995) 1 SCC page-428, this Tribunal is of the considered view that the adjudication to be made by the Tribunal under Section 4 of the Act is judicial in nature and has to be on the basis of material placed before it by both the parties. Going by the ipse dixit of the Central Government and putting its stamp of approval on the declaration made by the Central Government would tantamount to abdication of its functions. In the case of *Jamaat-E-Islami Hind Vs. Union of India* (supra), the Apex Court, while examining Sections 3 & 4 of the Act, has clearly held that the words used in sub-section (1) of Section 4 “adjudication” and “sufficient cause” are significant and the nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the Notification under sub-Section (1) of Section 3 is issued by the Central Government, cause shown by the Association in reply to the notice and take into consideration such further information, which it may call to decide the existence of sufficient cause for declaring the Association to be unlawful. It was held that the entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides. It was also held that such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it. The

test of greater probability was held to be the pragmatic test applicable in the context. In para 22 of the judgement, while discussing the question of the non-disclosure of the sensitive information and evidence to the Association, whenever justified in public interest, it was further observed that the material that may be considered by the Tribunal need not be legal evidence in the strict sense. It was also held that if Tribunal scrutinizes such material the procedure would satisfy the requirements of natural justice. It was reiterated that the adjudication through judicial scrutiny of material placed before Tribunal would satisfy the minimum requirements of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on material placed before it by parties and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government.

The Supreme Court of India in the case of *Jamaat-E-Islami Hind* (supra) discussed an argument in regard to impingement of Article 19(1)(c) of the Constitution of India and the restrictions saved by Article 19(4). The Supreme Court quoted a case of United States Supreme Court on the subject in para 23 of the judgement, which reads as under :

"23. In John J. Morrissey and G. Donald Booher V.

Lou B. Brewer the United States Supreme Court, in a case of

parole revocation, indicated the minimum requirements to be followed, as under : (L Ed pp.498-99)

"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."

In para 26 of the judgement, the Supreme Court further held:

"26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision

is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny after a show-cause notice of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires."

In view of the provisions of the Act and the law laid down by the Apex Court, it can be safely said that the proceedings before the Tribunal are not at par with a criminal trial, which is adversarial in nature and in which, the prosecution is required to prove its allegations against an accused beyond shadow of doubt. The proceedings before the Tribunal are inquisitorial in nature to enable it to form an opinion as to whether there is sufficient cause for declaring the Association unlawful. For this purpose, the material that may be considered by the Tribunal need not be strictly legal evidence. For example, in a criminal trial, statements recorded under Section 161 Cr.PC, case diaries under Section 172 of the Cr.PC, confessions made by the accused and any material proved on record cannot be taken note of but in an inquiry like the present one, the Tribunal may take into consideration even such material for adjudicating as to whether or not there is sufficient cause for declaring the Association unlawful. A reference made to the Tribunal under Section 4 of the Act can not be converted into a trial of those, who are facing prosecutions under the Act or other penal provisions. It is not possible for the Tribunal to adjudicate as to whether the criminal cases relied upon by the Central Government are false or true. Even the Central Government may not be in a position to do so at the time of making a declaration. The Tribunal is, therefore, merely enjoined to adjudicate by forming an opinion as to whether there is some material,

which is credible enough to make a declaration that the Association is unlawful. Neither sufficiency of material considered by the Central Government nor satisfaction of Central Government can be subjected to judicial review. Material collected by Intelligence Agencies, case diaries of Police, material seized from the accused, secret informations received by Officers entrusted with surveillance, statements and declarations made by Office bearers of an Association and the involvement of its members/activists in unlawful activities are relevant material which can be acted upon by the Central Government and considered by the Tribunal holding inquiry.

In the case of "Union of India Vs. Tulsiram Patel" reported in AIR 1985 SC P-1416, a Constitution Bench of the Court had the occasion of considering the expressions "law and order", "public order", "security of the State", which are used in different Acts. In para 140 of the judgement, their Lordships observed as under :

" 140. The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of those situations those which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the

State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine."

Considerations of maintaining law and order, and protection of sovereignty and integrity of country may justify a declaration without a deep probe into the truth or falsity of material. The Act which is aimed at prevention of unlawful activities of individuals and associations gives justifiable latitude to Government in the matter of making a declaration and leaves it to the subjective satisfaction of Central Government to declare an Association unlawful if it appears to be involved in unlawful activities. Adjudication by the Tribunal is a safeguard against malafide exercise of powers by the Central Government and warrants interference only when there is total absence of material against an Association. However, the Tribunal has no right to substitute its own opinion to the subjective satisfaction of Central Government in regard to the sufficiency of material.

Before coming to the factual matrix of the matter, it would be proper to deal with certain legal submissions made by learned counsel for the Association. The first and foremost contention of learned counsel for the Association is that this Tribunal has not followed the procedure prescribed by Code of Civil Procedure for holding the inquiry and as such, the entire proceedings are vitiated. Learned ASG has countered this submission by contending that the provisions of Code of Civil Procedure or the Evidence Act are not strictly applicable to the proceedings being conducted by this Tribunal and as such, there is no substance in the submission made by learned counsel for the Association in this regard. After hearing learned counsel for the parties, this Tribunal finds that the procedure to be followed by the Tribunal is prescribed in Section 9, Section 5(5) of the Act and Rule 3 of the Unlawful Activities (Prevention) Rules, 1967. Section 9 of the Act clearly says that, so far as may be, the procedure to be followed by the Tribunal in holding an inquiry under sub-Section (3) of Section 4 of the Act shall be the procedure laid down in the Code of Civil Procedure for the investigations of the claims. Section 5 sub-Clause (5) provides that subject to the provisions of Section 9, the Tribunal shall have the power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings. Rule 3 further clarifies the position by saying that as far as practicable, the Rules

of evidence laid down in the Indian Evidence Act, 1872 shall be followed. All these provisions, when read conjointly, in the light of the judgement of the Apex Court in *Jamaat-E-Islami Hind Vs. Union of India* (supra), make it clear that the Tribunal is neither strictly bound by the provisions of Code of Civil Procedure nor by the Indian Evidence Act, 1872 and is only required to follow the basic principles thereof and that too as far as practicable.

In the present case, the procedure adopted by the Tribunal was in conformity with the Code of Civil Procedure as well as rules of evidence inasmuch as the examination-in-chief of the witnesses was received on affidavits and thereafter, opportunity was given to respondent-Association to cross-examine those witnesses. The true copies of the official documents, which were sought to be produced before the Tribunal were allowed to be placed on record on the strength of the affidavits of the witnesses. The plea of learned counsel for the respondent-Association that only certified copies thereof could have been placed on record cannot be sustained for the reason that it was not practicable for the Central Government or the State Governments to obtain certified copies of such voluminous documents and place them on record within the period the proceedings of the Tribunal were required to be completed. Moreover, all these documents were merely corroborative to the statements of the witnesses and were placed on record to show that

a large number of criminal cases had been registered throughout the country against SIMI members/activists, in which statements of the witnesses had been recorded, seizure Memos had been prepared for seizing various documents and other material. These proceedings cannot be equated with a criminal trial in which a Court is bound by strict rules of evidence. The material and evidence produced before the Tribunal by the parties is only in order to enable the Tribunal to form its opinion in regard to the satisfaction arrived at by the Central Government for making a declaration under Section 3(1) of the Act. The Tribunal has followed the procedure prescribed by Code of Civil Procedure as well as rules of evidence to the extent practicable. Therefore, it cannot be said that the procedure followed by the Tribunal was contrary to the provisions of the Act and as such, the proceedings are vitiated.

The plea that the copies of all the documents, material and affidavits were not supplied to the respondent-Association in order to enable it to challenge the declaration made by the Central Government is also devoid of merit inasmuch as except the material which the Central Government did not wish to disclose in public interest, all other material was supplied to the respondent-Association before it filed reply to the notice. The copies of documents and affidavits of the witnesses examined by the Tribunal, were also supplied to learned counsel for the

respondent-Association before the examination of the witnesses by the Tribunal and proper opportunity was given to learned counsel for the respondent-Association for cross-examining the witnesses produced by the Central Government. As stated earlier also, this inquiry is not adversarial in nature and is inquisitorial only and as such, the requirements of natural justice stood met by following this procedure as the parties were required only to assist the Tribunal in forming its opinion in terms of sub-Clause (3) of Section 4 of the Act.

Learned counsel for the respondent-Association has made a grievance about the absence of the cross-examination of some witnesses examined by the Central Government at Ahmedabad but the blame squarely lies upon the respondent-Association itself inasmuch as PWs-70 to PW-74, who were examined at Ahmedabad and could not be cross-examined on behalf of the respondent-Association, were not examined suddenly to spring a surprise upon the respondent-Association. The sittings of the Tribunal at Ahmedabad were held on 28th & 29th February, 2004 and 1st March, 2004 in terms of the schedule declared by this Tribunal on 13.1.2004 in the presence of learned counsel for the respondent-Association. Not only this, on 15.2.2004 also, while concluding evidence at Udainur, it was once again announced, in the presence of learned counsel for the parties, that the next sittings of the Tribunal were scheduled to be held at Ahmedabad on the aforesaid dates.

Therefore, the absence of the cross-examination of these witnesses was only on account of the lapse of the respondent-Association. The plea as to why PW-74 Shri A.K.Jain, Joint Secretary, Ministry of Home Affairs, Government of India was examined at Ahmedabad is also without any merit inasmuch as in the course of the recording of the evidence by the Tribunal, the Central Government could produce its witnesses wherever it liked. The Central Government could not even think that at Ahmedabad, none would be appearing for the respondent-Association inasmuch as in all earlier sittings of the Tribunal, one or the other counsel had been appearing for the Association. Moreover, PW-74 Shri A.K.Jain, Joint Secretary, Government of India has deposed nothing from his personal knowledge and has made a statement only on the basis of records. He was involved in the ministerial act of preparing a note only on the basis of the intelligence reports, IB inputs and the reports of the State Governments for the issuance of a notification under Section 3(1) of the Act. He has deposed in regard to the preparation of the background note and issuance of the notification in question and as such, unnecessary issue is being raised in regard to his examination at Ahmedabad and the absence of his cross-examination on behalf of the Association.

Learned counsel for the respondent-Association has also submitted that this Tribunal ought not to have held sittings outside Delhi inasmuch as it was not possible for the respondent-Association to

effectively participate in the proceedings. This submission is also without any substance as the purpose of holding sittings outside Delhi was to expedite the proceedings. The Tribunal was left with about four months only to complete the inquiry from the date of expiry of notice period issued to Association. Had the witnesses from all over India been summoned to Delhi, there was every possibility of not meeting the deadline and thereby lapse of the notification issued by the Central Government under Section 3(1) of the Act. Moreover, the Central Government as well as State Governments considered it more convenient to examine their witnesses in their own States as they had to produce voluminous official documents. In the sittings held in their own States, the production of the witnesses as well as documents was more convenient to the Government. This Tribunal was also of the view that the sittings in different States, in which activities of the Association were being allegedly carried on, was necessary from the point of view of general public also as some witness from the public also could appear for or against the declaration. Public notices were issued in every State where the sittings of the Tribunal were held inviting members of general public to appear before the Tribunal and make statements. Learned ASG submits that non-appearance of any public witness in any of the States clearly demonstrates as to how scared people are of the respondent-Association. Section 5(5) of the Act clearly empowers the Tribunal to

regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it would hold its sittings and as such, there was nothing wrong in holding sittings outside Delhi. The plea that respondent-Association was prejudiced is without any substance inasmuch as in all the sittings of the Tribunal except the sittings at Ahmedabad, the respondent-Association was duly represented by a number of counsel.

Learned counsel for the Association has vehemently argued that the Act confers no power on the Central Government to renew a ban and as such, the present notification dated 26.9.2003 is illegal and unwarranted. This contention cannot be sustained firstly for the reason that there is nothing in the Act to say that the Central Government has no power to issue successive notifications under Section 3(1) of the Act. If this submission is sustained, the result would be alarming as an unlawful Association, after a ban for a period of two years, may revive and re-start its unlawful activities with impunity and without any check. This would be not only against the interests of the country but also contrary to the aims and objects of the Act which intends to control and curb the activities of unlawful Associations. The contention that a hearing was required to be given to the Association by the Central Government before making declaration under Section 3(1) of the Act cannot be sustained for the reason that neither there is any such requirement in the Act nor it

appears to be practicable. Such a course may defeat the very purpose of the Act. The argument that there were no circumstances warranting immediate issuance of the declaration under proviso to Section 3(3) of the Act is devoid of force for the reason that in view of the earlier ban and fresh inputs that the Association was still continuing with its unlawful activities, the Central Government had justification to impose the ban with immediate effect.

The plea that the proof of affidavits of so many Police Officers by one witness was not proper and does not constitute legal evidence against the Association is also devoid of force inasmuch as the witnesses whose affidavits were proved by other officers were making depositions on the basis of the records, true copies of which had been attached with their affidavits and placed before the Tribunal for perusal. Even if the Tribunal does not consider those averments contained in such affidavits, which were based on the personal knowledge of the deponents the Tribunal is left with other evidence on record as well as documents to form its opinion in regard to the sufficiency of cause for declaring the Association to be unlawful. Therefore, on this ground also, it cannot be said that the declaration made by the Central Government is liable to be cancelled.

Learned counsel for the Association submits that the notification dated 26.9.2003 issued by the Central Government is liable

to be cancelled for the reason that it has been passed mechanically, without application of mind and for malafide reasons to gain political mileage. He submits that a comparison of the notification in question and the first notification issued by the Central Government on 27.9.2001 shows that both are based on absolutely identical grounds. He also points out that the background notes in regard to both the notifications contain identical grounds and are couched in identical language. After hearing learned counsel for the parties, this Tribunal is of the considered view that merely for the reason that the two notifications are based on similar grounds or are drafted in identical language cannot be made a ground to hold that the notification has been issued mechanically and without application of mind. If the allegations in regard to the activities of the Association remain identical and the grounds for issuing a notification also are same the ministerial act of drafting the background note as well as notification in a similar language does not ipso facto establish that the declaration has been made without application of mind or is malafide to gain political mileage. A perusal of the records, which were summoned by this Tribunal shows that the present declaration was in consequence of fresh inputs by intelligence agencies and the material brought to the notice of the Central Government by different State Governments. The mere use of identical language by the Officers of the Central Government, therefore, cannot be made a ground for holding that the

declaration was made mechanically or without any application of mind. It is well known that the ministerial staff usually follows previous precedents and initiates proposals in the language and tenor used and approved earlier.

Coming to the question as to whether or not there is sufficient cause for declaring the respondent-Association unlawful, this Court finds the evidence of the witnesses produced by the Central Government and the material placed on record quite revealing. This Tribunal would like to highlight the depositions made by some of the witnesses before considering the question of confirming or cancelling the declaration made by the Central Government.

The Tribunal straightaway adverts to the statement made by PW-2 Mohd. Jameeluddin, Inspector of Police, P.S. Kalapathar, Hyderabad. He deposed on oath that two accused, who were arrested, in Criminal Case No.51/2001 registered on 30.9.2001 under Section 153-B read with Section 10 of the Act, were found sitting in a room and criticising the Government for banning SIMI. They were supporting Kashmiri militants and condemning the Government for supporting the Americans against Taliban. In the course of their interrogations, these accused gave details of the activities of SIMI and their support to the demand for cession of Kashmir to Pakistan. From their possession, Constitution of SIMI, unused membership forms of SIMI, subscription

forms, receipts of SIMI and various books, posters etc. were recovered. Two audio cassettes were also recovered in which Ilias Khan, regional Secretary of SIMI was making anti-Hindu and anti-India remarks. He was also encouraging Mujahidins. He also referred to another case registered on 30.9.2001 in which four persons were arrested, who were also condemning the Government for banning the SIMI and were supporting Kashmiri militants' demand for separate Jammu & Kashmir.

They were praising Osama Bin Laden. In the course of their interrogations, they admitted that they were SIMI activists. He also referred to the cases registered on 2nd and 3rd October, 2001 in which certain SIMI activists were arrested, who also, in the course of their interrogations, confessed that they were SIMI activists and were supporting demand for cession of Kashmir to Pakistan. This witness stated that he was dealing with SIMI activists in the State of Andhra Pradesh and had found that the office bearers and members of SIMI were misguiding and misleading Muslim youth by telling them that "Jehad" was their path and "Shahadat" was their desire. They have also been telling these youths that Kashmir is not a part of India and Muslim terrorists in the State of Jammu & Kashmir are not militants but freedom fighters. According to him, they were calling upon their workers to make efforts to convert Hindus into Muslims and if they killed a Kafir, they would attain heaven. Only two suggestions were put to this witness

which he denied. It was suggested to him that he was deposing falsely to support the Central Government. No other question was put to this witness and as such, there are no grounds for disbelieving the statement made by this witness on oath, which clearly shows that even after first ban, the SIMI activists were active in the State of Andhra Pradesh and were supporting demand of cession of Jammu & Kashmir to Pakistan and were supporting the militants in Kashmir. SIMI activists were also spreading hatred against Hinduism.

PW-3 Shri B.Prakash, Inspector of Police, P.S. Narsapur, Hyderabad also deposed about a case registered on 2.10.2001 and stated that the accused were propagating the ideology of SIMI among Muslim youth for raising funds for the activities of SIMI and achieving their goal of establishing Islamic rule in India. He also stated that SIMI members did not believe in the Constitution of India and say that Kashmir is not a part of India and the Muslim activists in the State of Jammu & Kashmir are not militants but freedom fighters. In his cross-examination, he admitted that after 3.10.2001, no FIR had been registered under the said Act but added that they were keeping strict surveillance to prevent such crimes. He also stated that some of the SIMI activists had gone underground.

PW-6 Shri Ravindra Naik, D.S.P., General Offences Wing of CID, Hyderabad stated that the persons mentioned in Ex.P-12, were

members of SIMI as well as an Organization known as "Indian Muslim Mohammad Mujahidin", which was having links with ISI of Pakistan. He deposed about a conference organized by SIMI at Aurangabad in September, 1999 and stated that after attending that conference, the aforesaid accused had started indulging in serious offences including Section 153-A of IPC. PW-8 Shri Gansyamsingh T. Padwal, Inspector of Police, P.S. Kurla, Mumbai, also deposed and proved on record a photograph in which the SIMI activists were shown to be holding a meeting. He also added that the SIMI activists, who were arrested on 27th & 28th September, 2001, had raised anti-India slogans and eulogized Osama Bin Laden when they came out of the Court. Nothing could be brought out in their cross-examinations to show that they were deposing falsely.

PW-9 Shri Shrikant K. Ramdas, Sub-Inspector of Police, Detection Crime Branch, CID, Unit-VI, Mumbai, was one of the investigating officers in the bomb blast cases which took place in Mumbai resulting in death of a large number of persons. He stated that out of arrested accused, some were having connections with SIMI. One accused C.A.M. Basheer, who was a Proclaimed Offender, was All India President of SIMI and accused Saquib Abdul Hamid Nachan was All India General Secretary of SIMI. A telephonic conversation between the two had disclosed that accused Nachan had given shelter to a Pakistani

terrorist named Faizal Khan of Lashkar-E-Toeba. Said Faizal Khan was later killed in Police operation at Goregaon, Mumbai. The accused, who were SIMI activists, had a meeting with Faizal Khan at Pune before these bomb blasts in which they decided to give training to Muslim youth for carrying out "Jehad". Thereafter, they had actually given training to some Muslim youth regarding use of weapons at Mohali Hills as well as Karvi Hills in District Thane, Mumbai. The confessions made by these accused, which were recorded under Section 32 of the Prevention of Terrorism Act disclosed that they were SIMI activists and were involved in aforesaid bomb blasts. They also admitted having inter-State connections with several Pakistan based terrorist Organizations. One accused Noor Abdul Malik Ansari had undergone three months' training given by Lashkar-E-Toeba in Pakistan. Accused Saquib Abdul Hamid Nachan had earlier been convicted in a TADA case and was awarded 10 years' sentence but after his release, he came back to Maharashtra and got involved in unlawful activities. This witness also stated that their investigations had revealed that SIMI activists were declaring that Kashmir is not a part of India and were propagating that those Muslims who kill non-Muslims, would go to heaven. In his cross-examination, he admitted that they were not having complete list/details of SIMI members/activists. He denied that he was making a false statement. Nothing else could be elicited in his cross-examination to show that he

was depositing falsely.

PW-14 Shri Anur Prabhakar, Inspector, also deposed about the involvement of SIMI activists in bomb blast cases in December, 2002, January, 2003 and March, 2003. 11 accused out of 19 were found to be SIMI members or having connections with SIMI. They were also having links with Pakistani terrorist outfits as well as Muslim Defence Force, which was having its roots in Madras. This Muslim Defence Force was found to be funded by Abu Hamza, staying at Saudi Arabia and wanted in Ghatkopar bomb blast case. He was stated to be the present Chairman of Lashkar-E-Toiba in Saudi Arabia. One of the accused Imran Rehman Khan was also found to be a member of Lashkar-E-Toiba. From the custody of the accused Sheikh Mohammad Muzzammi Jameel Ahmed, some CDs were recovered, which contained an appeal by Maulana Azhar, a terrorist, who was involved in the hijacking of IC-814 from Nepal to Kandahar and later released by the Government of India. These CDs contained the clippings of Godhara riots in Gujarat, interviews of victims, demolition of Babri Masjid and a Mosque in Palestine. It also contained an Al-Qaeda manual, which outfit was being run by Osama Bin Laden. In his cross-examination, he admitted that the CDs seized by him did not contain the name of SIMI but it could be linked with SIMI because these were being viewed and used by SIMI members. The cross-examination of PW-14 did not show

that this witness was making false statement or that he had no material in support of his statement. Therefore, on the basis of the statement of this witness, it can be safely said that SIMI activists were involved in three bomb blast cases in Mumbai and were in close contact with some terrorist outfits based in Pakistan and were supporting the demand of cession of Kashmir with Pakistan and were eugolising Osama Bin Laden. They were thus, clearly trying to disrupt the sovereignty and territorial integrity of India.

PWs-19 and 20, who were examined at Kerala, deposed about the activities of SIMI activists after the first ban. PW-20 proved on record a photocopy of a leaflet published by "Muslim Ikya Samithi", an Organization which had been formed by some of the SIMI activists. In the leaflet issued by this Organization, the Muslims were called upon to stand against Shiv Sena, Vishwa Hindu Parishad terrorists. By referring to Godhara incident, Gujarat riots, Babri Masjid, Bombay riots and some other incidents, a message was sought to be conveyed to the Muslims that with the support of the Government, criminals were coming to behead the Muslims and the only way to face them was strong retaliation. Even the newspaper "The Hindu" dated 3.9.2003 had carried a report, a copy of which is Ex.P-49 in which it was stated that SIMI activists were regrouping in the State of Kerala. There is nothing to controvert the

statements of these witnesses which show the propensity of activities of SIMI even after first ban.

PWs-21, 22, 28, 31 & 33 examined at Bhopal disclosed in no uncertain terms that in spite of the ban, SIMI activists were still indulging in unlawful activities secretly and were trying to disturb communal harmony. These PWs stated that SIMI activists were supporting terrorism in Jammu & Kashmir by saying that the same was a freedom movement. PW-22 categorically stated in his cross-examination that his affidavit was based on his personal knowledge as well as documents and he had obtained information from intelligence sources that SIMI was having close connections with terrorist groups. PW-28 Shri I.B.Singh, Dy.Superintendent of Police gave details of the literature and material recovered from some of the accused, which included SIMI literature as well as a photo in which Babri Masjid structure was shown to be shedding tears. He admitted that they had not succeeded in tracing out the printers/publishers of the said pamphlet but the recovery of such material from the accused is sufficient to convey that even after ban, SIMI activists were trying to create communal disharmony in country.

PW-31 Shri Ravi Shankar Shukla, D.S.P., gave details of various cases registered against SIMI activists, some of which were registered in the month of October, 2001 to show that SIMI activists were continuing with unlawful activities. One of the pamphlets on page 1071

of Ex.P-71 (Colly) was cogolising Talibans. PW-33 Shri Aditya Dubey,

Asstt. Inspector General of Police, proved a list of case registered in the State of Madhya Pradesh against SIMI activists/members after the imposition of ban on 27.9.2001 and stated that SIMI activists do not consider Kashmir to be part of India and stated that SIMI is a threat to national integrity and communal harmony of the country. He also stated that the SIMI activists were somewhat under control because of the ban and continuous surveillance but still, they were carrying on their activities in a clandestine manner. He also stated that they were trying to re-group themselves under different names, one of which was "Tehrique-Khilafat". In his cross-examination, he stated that he had information about some persons, who were controlling/running "Tehrique-Khilafat" but in public interest, he was not willing to disclose their names.

At Pune, some witnesses were produced by Central Government, who fully supported the case of the Central Government that SIMI was continuing with its unlawful activities in spite of ban. PW-34 Dr.Dhyaneswar Sadashiv Chavan, Assistant Commissioner of

Police, Crime Branch, Aurangabad, Maharashtra proved his affidavit Ex.P-76 and the documents Ex.P-77. He deposed about the CR.No.156/2002, which was registered in connection with a bomb blast on 2.12.2002. On 27.12.2002, accused Dr.Mohammed Abdul Matin Abdul Basit was arrested who, in the course of interrogations, disclosed

that he was a partner of M/s. Pragma Soft Technologies, Aurangabad and he and his partners were running this Company for SIMI activists. The office of this Firm was raided on 28.12.2002 and Computer sets, CDs, floppies, hard disks, photographs, etc. were recovered, which revealed pictures of Godhara incident/riots and included appeal to Muslims to come together and declare "Jehad" against Hindus and India. He stated that the accused arrested in this case were SIMI activists. Floppy No.12, which was recovered, contained scenes of the blowing of World Trade Centre at U.S.A. Nothing material could be brought out in his cross-examination to show that he was making a false statement before this Tribunal.

PW-35 Shri S.S.Deshmukh, Inspector of Police, Crime Branch, Amrawati, Maharashtra stated that after the ban also, SIMI activists were continuing with their unlawful activities and even Newspaper articles were printed in an Urdu daily supporting Osama Bin Laden and SIMI. In his cross-examination, he stated that by right of self-determination as mentioned in his affidavit, he meant that SIMI activists do not consider Kashmir as part of India and they propagate break up of Kashmir from India.

PW-41 Shri Dattatreya, Asstt. Commissioner of Police, Crime Branch, Sholapur City, Maharashtra deposed about cases registered on 8.8.2003 and 18.8.2003 under Sections 4,5 & 6 of the

Explosives Act, 1908 to which various provisions of POTA were also added. The three accused, who were found designing "Sutli Bombs" and having 8 "Sutli Bombs", were arrested. From the house of accused Anwar Hussain Gulab Hussain Sheikh, one "Aawaan form" was seized, which contained a pledge of SIMI Organization. The accused made confessions under Section 32 of Prevention of Terrorism Act, 2002 and admitted that they were SIMI activists and their ultimate aim was spread of terrorism. CDs were also recovered containing provocative speeches of Maulana Azhar Masood, the terrorist leader of Jaish-E-Mohammed. In his cross-examination, he also stated that they had seized membership forms of accused Ibrahim Momin in regard to his admission to SIMI, which was on page 57 of Ex.P-135. It contained the name and address of accused Mohammad Ibrahim Momin and contained his signatures on the pledge to join SIMI. It is true that this document was not bearing the signatures of the President or any office bearer of SIMI but the presence of these documents shows that SIMI activists/members/sympathisers were involved in offences punishable under the Explosive Act as well as POTA.

PW-46 Shri Nitin Prabhakar Lohar, Sub-Divisional Police Officer, City Division Akola, Maharashtra, referred to an accused Amin Rana, who was arrested on 17.12.2001. He was an active member of SIMI and had assaulted two Hindus saying that call for "Jehad" was

being given. He also stated that SIMI activists were propagating Pan Islamic Fundamentalism and were obtaining funds from illegal sources. This witness was hardly put any question in his cross-examination to show that he was deposing falsely.

PW-52 Shri Chandrakant, Police Inspector, attached to Wardha City Police Station, Wardha, Maharashtra, deposed about a raid conducted in the house of accused Sayyad Mushtaq Ali from where, flag of SIMI, Banner of SIMI and some literature of SIMI was recovered. In his cross-examination, he admitted that after September, 2003, no case had been registered against any SIMI activist. PW-58 Mrs. Supriya Patil Yadav, Deputy Commissioner of Police (Security), SID, Mumbai, Maharashtra, proved her affidavit Ex.P-223 and stated that after taking over as DCP (Security) in September, 2003, she had found that the activities of SIMI were still continuing secretly. She had also found that SIMI had connections with terrorist groups like Lashkar-E-Toeba and Al-Qaeda and were collecting funds from foreign countries. She stated that if ban was lifted, SIMI would come out openly and threaten national integrity. She stated that they were eugolising Osama Bin Laden and saying that he should send his forces to India to teach a lesson to Indians. She referred to case registered at Thane Nagar P.S. In the year 2003. In the search of accused in the said case, a map of India was recovered in which Kashmir was shown as part of Pakistan. Receipts of SIMI

membership and other documents were also recovered. It may be mentioned that nothing material could be brought out in the cross-examination of this witness to show that she was deposing falsely. The statement of this witness clearly shows that up to 2003 also, SIMI activists were indulging in unlawful activities and they had the courage to show Kashmir as part of Pakistan.

PWs-59 to 69 were examined at Udaipur. All these witnesses categorically stated that SIMI activists were still indulging in unlawful activities. PW-62 Shri Ram Gopal, A.S.I., Police Lines, Distt. Baran, Rajasthan, deposed about a case registered on 5.10.2001 in which one Mohammed Sharif was arrested while he was explaining to a gathering, the principles and objects of banned organization SIMI and was provoking them against the ban. He, however, in his cross-examination, admitted that after 5.10.2001, no such meeting had come to his notice. He stated that he had not seen the records to show that accused Mohd. Sharif was a member of SIMI but his testimony clearly shows that accused Mohd. Sharif was a sympathiser of SIMI and even after imposition of ban, was explaining to the people the objects of SIMI. PW-63 Shri Banshidhar, S.I. of Police, Dausa Police Lines, Distt. Dausa, Rajasthan also deposed about a case registered on 28.9.2001 when the office of SIMI at Talab Para, within the jurisdiction of Kotwali Baran was raided and it was found that Abdul Matin, President and Mohd. Ilias,

Secretary of the banned organization SIMI were propagating principles of SIMI. He, however, admitted that he was not present at the time of raid inasmuch as he had taken over the investigations subsequently.

PW-68 Shri Khema Ram, S.I. of Police, P.S. Nasirabad Sadar, Distt. Azmer, Rajasthan, deposed about a case registered on 28.9.2001 when a pamphlet was found stuck on a wall of Masjid in which provocative remarks were made against Hindus. It had been issued by SIMI. Investigations showed that one Yunus had pasted this pamphlet on the wall. He could not find out as to whether this poster was printed prior to 27.9.2001 or thereafter. He admitted that accused Yunus was not a recorded member of SIMI but was a follower of SIMI.

PW-71 Shri M.J.Pancholi, Police Inspector, Police Headquarters, Anti-Corruption Bureau, G.S., Ahmedabad, deposed about a secret information received on 27.10.2001 that SIMI activists were planning to conduct a secret meeting at Surat at Rajshree Hall. The Hall was booked for All India Minorities Board but inquiries from Delhi revealed that no organization under such name was existing. A search was conducted at the said Hall on 28.12.2001. 123 persons were found present there and from their search, literature, pamphlets relating to SIMI were recovered in which Osama Bin Laden had been eugolized for his heroic actions in U.S.A. Investigations revealed that they were SIMI activists but were organizing a meeting under the banner of All India

Minorities Education Board which was non-existent. This witness was not cross-examined. The statement of this witness clearly shows that after the ban even, SIMI activists were trying to organize themselves under fictitious names and banners with a view to carry out the aims and objects of SIMI.

PW-72 Shri Jashvantsinh R.Vaghela, Sub-Inspector of Police, Karelbaug P.S., Vadodara City, Gujrat deposed about a case registered on 4.1.2002 in which literature was recovered from the accused, who were encouraging others to join SIMI. PW-75 Shri Hukam Chand, Sub-Inspector of Police, Special Cell, Lodi Colony, New Delhi deposed about a case FIR No.13/2002 registered at P.S. Special Cell, (S.B.), Lodi Colony, New Delhi, on 27.5.2002 when two SIMI activists/members were found pasting stickers on the eastern wall of Jamia Millia Islamia Urdu Library. Some of these stickers were found from the house of accused Mohd. Yasin Patel also. These accused were tried and convicted under Section 20 of POTA and 124-A IPC. He stated that the poster showed a picture of a fist containing missiles, which suggest mutiny. PW-76 Shri C.B.Sharma, Inspector of Police, Special Cell, Lodi Colony, New Delhi deposed about a case FIR No.532/2001.

Shri Shahid Badar, the erstwhile President of SIMI examined himself as RW-1 and proved his affidavit Ex.R/A on record. The thrust of his statement is that the SIMI has never involved itself in

any unlawful activity and it is a social, cultural and religious organization. According to him, SIMI has never challenged the integrity or sovereignty of India and has full faith in the Constitution of India. According to him, it has never supported secession of Kashmir nor it has supported any terrorist outfit of Osama Bin Laden and others. He has also stated that after the first ban, SIMI has become totally non-functional and there has been no activity by its members or workers and as such, there were no good grounds for issuing a second notification. In his cross-examination by learned ASG, he stated that he was unable to say anything about the seizure of books of accounts and records of SIMI by the Police as their offices have been sealed. He did not know as to whether its bank accounts have been attached or not. He admitted that he had not issued any press release to say that after the ban, SIMI had been dissolved or its activities had been suspended. He had not made any application to the Central Government under sub-Clause (2) of Section 6 of the Act for cancelling the notification on the ground that SIMI had become non-functional or its activities had been suspended. He denied that in spite of ban, SIMI was being run and the propensity of its activities was increasing. He also denied that SIMI had been receiving donations or gifts from foreign countries. He could not give the name of any person, friend or relation, who had given him financial assistance for fighting the litigation. He was also not in a position to produce any

literature, pamphlet or magazine in which he had condemned terrorism in Kashmir or the secessionist demand. He was also not in a position to give details of relief camps held in Gujrat.

The scrutiny of the material with the Central Government, material placed before this Tribunal and the statements of witnesses produced by parties, establish on record by preponderance of probability, that in spite of first ban imposed on SIMI on 27.9.2001, its members/activists have been indulging in unlawful activities in terms of Section 2(f) of the Act. They are involved in other heinous offences like bomb blasts etc. also. The involvement of SIMI activists in the bomb blasts in Mumbai in 2002 and 2003 in pursuance of a criminal conspiracy between SIMI activists and a foreign terrorist demonstrates their desire to disrupt the sovereignty and territorial integrity of India. The material on record shows not only that SIMI activists were in conspiracy with a foreign terrorist for the purpose of bomb blasts, they were also planning to train Muslim youth in India for the use of fire arms so that they could indulge in terrorist activities and create communal disharmony. It is also established on record that SIMI activists were openly demanding secession of Kashmir to Pakistan and one of them was found in possession of a map, in which Kashmir had been shown as part of Pakistan. After first ban, large number of cases were registered against

SIMI activists/members all over the country, which shows that even after the ban, SIMI activists have been indulging in unlawful activities.

The self-serving statement of RW-1 Shahid Badar that their Organization does not support secession of Kashmir or communal tension between Hindus and Muslims and it is meant for social service only, cannot be accepted in the face of overwhelming evidence led by the Central Government to show that the real goal of SIMI is to support secession of Kashmir to Pakistan, create communal tension between Hindus and Muslims and establish Islamic rule in India. The cross-examination of RW-1 shows that he has not come out with truth as his statement that after the first ban, the SIMI has become non-functional flies in the face of the above discussed unlawful activities of the SIMI members and activists. RW-1 was not in a position to explain as to where from they were getting funds to run the SIMI network and fight litigation. To the contrary, the inputs received by the Central Government, which have been withheld from the Association in public interest, have provided definite information to the Central Government that SIMI activists were collecting funds in U.S.A. even after the ban and were contemplating to set up new offices all over the country. It is fallacious to contend that after the first ban, SIMI ceased to exist by operation of law. It is also proved on record that SIMI activists/sympathisers eulogize Osama Bin Laden and Taliban and some

of them have been even saying that Osama Bin Laden should attack India. Their links with foreign terrorist outfits like Lashkar-E-Toeba, ISI etc. are also proved on record. They call Hindus “Kafirs” and proclaim that a Muslim, who kills a “Kafir”, goes to heaven. They also call for “Jehad” which actually conveys a bloody revolution. It has come in evidence that SIMI activists openly say that they do not believe in the Constitution of India and they want to establish Islamic rule not only in India but all over world. Material has been recovered from SIMI activists to show that they were supporting blast of Twin Towers at USA and had admiration for the terrorists, who had carried out the said barbaric act against humanity.

It has also come in evidence of the Police Officers that after first ban, SIMI activists have gone underground but are continuing with their activities surreptitiously. The Officers have repeatedly stated that but for the ban, the SIMI activists would have played havoc in the country. These statements cannot be brushed aside in view of the fact that these are based on intelligence inputs and surveillance by Police. The fact that the Central Government or the Police was unable to lay its hands on any authenticated list of SIMI members is immaterial for the reason that this list could be within the knowledge and custody of respondent-Association only and it was for it only to place it on record, if it wanted to show that the accused arrested in different cases in the

country were not SIMI members. RW-1 has not placed on record any Register or List of its members and it appears that the respondent-Association is deliberately holding it back so that its members can continue with their unlawful activities undetected and unnoticed. It is shown on record that after first ban, SIMI activists have been trying to re-group under different banners with a view to carry out their activities. The constitution of SIMI may be containing lofty ideals but these appear to be on paper only. In reality, its aim is nothing but to ensure secession of Kashmir to Pakistan and disrupt the sovereignty and territorial integrity of India.

There is nothing on record to show that SIMI has been serving the citizens of the country or that after the first ban, all its activities have come to a standstill. Had it been so, SIMI could have moved the Central Government under Section 6(2) of the Act for cancelling the notification. There is no explanation as to why so many inputs and intelligence reports have come and why so many cases against SIMI activists have been registered all over India if SIMI members are not involved in any unlawful activity. The inputs received by the Central Government show that a SIMI activist had gone to U.S.A. for collecting funds for SIMI. E-mail messages were intercepted to show that after the ban, the SIMI activists were planning to set up new offices and were thinking of providing financial assistance to the families of

those SIMI members, who had been arrested. It is thus, shown on record that even after the ban imposed in 2001, SIMI, its members, activists and sympathisers have been indulging in unlawful activities, endangering to the sovereignty and integrity of India. Their actions are capable of breeding communal disharmony in the country as they do not believe in the Constitution of India and want to establish Islamic rule in India. The acquittals of the accused in some of the cases is immaterial for the reason that in a criminal trial, prosecution is under an onerous duty to prove its case beyond any shadow of doubt and as such, an acquittal can take place for a variety of reasons. There is nothing on record to ~~show~~ that SIMI has ever disassociated itself with the accused arrested all over the country on the ground that they are not SIMI activists nor it has ever issued any press release, public notice or a statement to say that SIMI considers Kashmir an integral part of India and does not advocate its cession. SIMI has never declared that it condemns terrorism by Islamic terrorist Organizations. It has never declared or given a call to its members/activists/sympathisers in the country to promote brotherhood between Hindus and Muslims and have faith in the Constitution of India and the Government established by law.

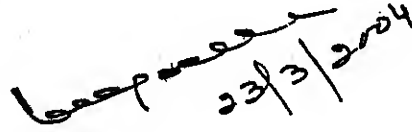
This Tribunal is satisfied that the activities of SIMI, its members, activists, sympathisers are disruptive in nature. The SIMI members/activists are in close contact with militant outfits and support

demand of cession of Kashmir. They support extremism and militancy in Jammu & Kashmir and as such, question the territorial integrity and sovereignty of India. They work for Islamization of world and advocate Islamic rule in India as well as other countries. They use derogatory language against Hindu Gods and deities and exhort Muslims for Jihad. The SIMI activists have been publishing objectionable posters with a view to create hatred between Hindus and Muslims.

This Tribunal, therefore, has no hesitation in concluding that there is sufficient cause for declaring SIMI to be unlawful and as such, the notification No. SO-1113-E dated 26.9.2003 issued by the Central Government under Section 3(1) of the Act stands confirmed.

The reference stands answered.

March 23, 2004
RK


R.C.CHOPRA, J.
Unlawful Activities (Prevention) Tribunal

[F.No. 14017/1/2004-NI-III]

A. K. JAIN, Jt. Secy.